

1 DENNIS A. BARLOW, CITY ATTORNEY  
(SBN 63849)

2 CAROL A. HUMISTON, SR. ASST. CITY  
ATTORNEY, (SBN 115592)

3 CITY OF BURBANK  
275 East Olive Avenue

4 P. O. Box 6459  
Burbank, CA 91510

5 Tel: (818) 238-5707 Fax: (818) 238-5724

6 LINDA MILLER SAVITT, SBN 94164

E-mail: LSavitt@brgslaw.com

7 BALLARD ROSENBERG GOLPER & SAVITT, LLP

500 North Brand Boulevard, 20<sup>th</sup> Floor

8 Glendale, CA 91203

Tel: (818) 508-3700, Fax: (818) 506-4827

9 RONALD F. FRANK (SBN 109076)

10 E-mail: rfrank@bwslaw.com

ROBERT J. TYSON (SBN 187311)

11 E-mail: rtyson@bwslaw.com

BURKE, WILLIAMS & SORESENSEN, LLP

12 444 S. Flower Street, 24<sup>th</sup> Floor

Los Angeles, CA 90071

13 Tel: 213-236-0600 Fax: 213-236-2700

14 Attorneys for Defendant City of Burbank

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES

18 WILLIAM TAYLOR

19 Plaintiff,

20 v.

21 CITY OF BURBANK and DOES 1  
through 100, inclusive,

22 Defendants..

Case No. BC 422252

Assigned to the Hon. John Shepard Wiley, Jr.,  
Department 50

**DECLARATION OF ROBERT J. TYSON  
IN SUPPORT OF DEFENDANT CITY OF  
BURBANK'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
ATTORNEY'S FEES**

**DATE: July 9, 2012**

**TIME: 8:30 a.m.**

**DEPT.: "50"**

CITY ATTORNEY  
2012 JUN 27 PM 3:11

25

**DECLARATION OF ROBERT J. TYSON**

I, ROBERT J. TYSON, declare:

1. I am an attorney at law duly licensed to practice before all of the Courts of the State of California and am a partner at the law firm of Burke, Williams & Sorensen, LLP, counsel of record for defendant CITY OF BURBANK ("City") in the above-referenced matter. I am among the lawyers at my firm with responsibility for handling this matter. I have personal knowledge of the facts contained in this Declaration, and if called as a witness I could and would testify competently to these facts under oath.

2. I know all three attorneys for plaintiff WILLIAM TAYLOR ("Plaintiff"). Originally, attorney Gregory W. Smith ("Smith") was the first attorney for Plaintiff with whom I worked on this case. Some time later, attorney Christopher Brizzolara ("Brizzolara") joined Smith as counsel for Plaintiff. During the pendency of this litigation matter City caused a petition for writ of mandate to be filed; during this appeal, Smith and Brizzolara were joined by attorney Douglas G. Benedon ("Benedon") as counsel for Plaintiff with Benedon principally handling the appellate issue. During the course of this litigation matter, I had occasion to correspond with each of Plaintiff's three attorneys. I principally handled the appellate aspects of this case, which resulted by the City's filing of a writ petition on the issue of Plaintiff filing his writ petition under seal. As such, I am intimately familiar with the efforts of counsel for both parties in connection with the writ proceedings.

3. Plaintiff and his counsel prepared Pitchess motions seeking disclosure of certain internal affairs investigations, one concerning Lt. Rosoff, another concerning Lt. Jette, to which Plaintiff had been privy with the Burbank Police Department. He served the Motions on August 25, 2010. Defense Counsel Kristin Pelletier realized that the motions themselves would publicly reveal the contents of those confidential investigations as recalled by Plaintiff, thus violating the officer's right to confidentiality as guaranteed in Penal Code § 832.7 without having first having gone through the process required by Evidence Code §§ 1043-1045. Ms. Pelletier contacted Mr. Smith immediately. Mr. Smith would not agree to have the documents filed under

1 seal, but he agreed to hold off filing them long enough to allow the City to seek an ex parte order  
2 requiring him to file them under seal. Attached hereto as Exhibit "A" is a true and correct copy  
3 of the City's ex parte application and declaration of Pelletier that my office filed.

4 4. Thereafter, the City brought an ex parte application seeking to require that the  
5 records be filed under seal on August 27, 2010. Plaintiff appeared and opposed, and so began an  
6 unnecessarily long, drawn-out process in which plaintiff opposed filing his motion under seal  
7 revealing the contents of confidential police personnel records. The initial hearing was continued  
8 to August 30, 2010, at which time Plaintiff filed an opposition. The Court initially denied the  
9 City's request but agreed to allow Jette and Rosoff time to file a noticed motion for protective  
10 order pursuant to *Evidence Code* §1045(d), which they did on September 22, 2010. This required  
11 an ex parte application to lodge plaintiff's served- Pitchess motions under seal so the Court could  
12 see the confidential information what would be revealed. Plaintiff appeared and orally opposed  
13 that ex parte application. Plaintiff filed an opposition to Jette and Rosoff's §1045 motion on  
14 October 5, 2010, and Jette and Rosoff filed a reply on October 13, 2010. Attached hereto as  
15 Exhibit "B" is a true and correct copy of the Petition for Writ of Mandate that my office filed in  
16 this matter.

17 5. The initial hearing was continued to August 30, 2010, at which time Plaintiff filed  
18 an opposition. The Court initially denied the City's request but agreed to allow Jette and Rosoff  
19 time to file a noticed motion for protective order pursuant to *Evidence Code* §1045(d), which they  
20 did on September 22, 2010. This required an ex parte application to lodge plaintiff's served-  
21 Pitchess motions under seal so the Court could see the confidential information what would be  
22 revealed. Plaintiff appeared and orally opposed that ex parte application. Plaintiff filed an  
23 opposition to Jette and Rosoff's §1045 motion on October 5, 2010, and Jette and Rosoff filed a  
24 reply on October 13, 2010.

25 6. The Court continued the hearing on the officer's motion from October to  
26 December 6, 2010, and when counsel appeared on that date, continued it again to December 15,  
27 2010. On December 15, 2010, the Respondent Court denied Jette's and Rosoff's motion. On  
28

1 December 30, 2010, Defendant city and Jette and Rosoff filed a petition for writ with the Court of  
2 Appeal. On January 12, 2011, the Court of Appeal issued an Order to Show Cause and set the  
3 matter for oral argument. Plaintiff filed a return which continued to oppose sealing the records  
4 Nevertheless, during oral argument before the Court of Appeal, Plaintiff's appellate counsel  
5 immediately conceded that Plaintiff would agree to file the motions under seal as had been  
6 requested by Defendant city some *eight months earlier*. The Court issued its opinion on May 23,  
7 2011, requiring the motions be filed under seal. Attached hereto as Exhibit "C" is a true and  
8 correct copy of the Court's May 23, 2011 opinion that I obtained from Westlaw.

9 7. On December 1, 2010, Plaintiff filed a purported Pitchess Motion seeking to gain  
10 access to irrelevant attorney-client privileged communications between the City and two outside  
11 attorneys—Merrick Bobb and Debra Wong Yang – who provided legal advice to the City on  
12 issues not related to this action. A Pitchess Motion is not a proper vehicle for seeking attorney-  
13 client information, and Mr. Smith had earlier represented to the Court that the work of Mr. Bobb  
14 and Ms. Yang "don't really have anything to do with our case." In lieu of a reply brief, Plaintiff  
15 sought to continue the hearing. The motion and request for continuance were both denied.  
16 Attached hereto as Exhibit "D" is a true and correct copy of the City's Opposition to Plaintiff's  
17 motion that we filed in this matter. Attached hereto as Exhibit "E" is a true and correct copy of  
18 the Reply of Plaintiff to the Opposition in Exhibit D, of which my office received service from  
19 Plaintiff.

20 I declare under the penalty of perjury under the law of the State of California and United  
21 States of America that the foregoing is true and correct and that this declaration was executed this  
22 25<sup>th</sup> day of June, 2012, at Los Angeles, California.

23  
24  
25  
26  
27  
28  
  
ROBERT J. TYSON



1 DENNIS A. BARLOW, CITY ATTORNEY  
(SBN 63849)  
2 CAROL A. HUMISTON, SR. ASST. CITY ATTY.  
(SBN 115592)  
3 275 East Olive Avenue  
P. O. Box 6459  
4 Burbank, CA 91510  
Tel: (818) 238-5707 Fax: (818) 238-5724

5 KRISTIN A. PELLETIER (SBN 155378)  
6 E-mail: [kpelletier@bwslaw.com](mailto:kpelletier@bwslaw.com)  
ROBERT J. TYSON (SBN 187311)  
7 E-mail: [rtyson@bwslaw.com](mailto:rtyson@bwslaw.com)  
BURKE, WILLIAMS & SORENSEN, LLP  
8 444 S. Flower Street, 24<sup>th</sup> Floor  
Los Angeles, CA 90071  
9 Tel: 213-236-0600 Fax: 213-236-2700

10 Attorneys for Defendant  
11 City of Burbank

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES  
14

15 WILLIAM TAYLOR,

16 Plaintiff,

17 v.

18 CITY OF BURBANK and DOES 1  
19 through 100, inclusive,,  
20 Defendants.

Case No. BC 422252

DEFENDANT'S EX PARTE APPLICATION  
TO SEAL PLAINTIFF'S MOTIONS FOR  
DISCOVERY OF PEACE OFFICER  
PERSONNEL AND OTHER RECORDS  
REGARDING BURBANK POLICE  
LIEUTENANT ERIC ROSOFF AND  
FORMER BURBANK POLICE  
LIEUTENANT JAY JETTE OR,  
ALTERNATIVELY, TO SEAL MOTIONS  
PENDING APPLICATION FOR WRIT TO  
COURT OF APPEAL

Date: August 27, 2010  
Time: 8:30 a.m.  
Dept.: 50

21  
22  
23  
24  
25  
26  
27  
28  
LA #4841-9120-3591 v1

- 1 -

EX PARTE APPLICATION TO SEAL PLAINTIFF'S MOTIONS FOR DISCOVERY OF PEACE OFFICER  
PERSONNEL AND OTHER RECORDS

Exempt From Fee  
Pursuant To  
Government Code  
Section 6103

ORIGINAL FILED

AUG 27 2010

LOS ANGELES  
SUPERIOR COURT

1 TO THE CLERK OF THE COURT AND TO PLAINTIFF AND HIS ATTORNEYS OF  
2 RECORD:

3 The City of Burbank hereby applies *ex parte* for an order sealing the: (1) Motion for  
4 Discovery of Peace Officer Personnel and Other Records regarding Burbank Police Department  
5 Lieutenant Jay Jette; Memorandum of Points and Authorities; Declaration of Christopher  
6 Brizzolara, and (2) Motion for Discovery of Peace Officer Personnel and Other Records  
7 regarding Burbank Police Department Lieutenant Eric Rosoff; Memorandum of Points and  
8 Authorities; Declaration of Christopher Brizzolara (collectively, the "Pitchess Motions") brought  
9 by plaintiff William Taylor ("plaintiff") in this case.<sup>1</sup> In addition, the City requests that the Court  
10 issue an Order that the Opposition and Reply Memorandum regarding the Pitchess Motions  
11 likewise be filed under seal. Alternatively, the City requests that the Pitchess Motions and related  
12 records be sealed until such time as the City can seek a writ from the Court of Appeal sealing  
13 these records. Good cause exists for sealing these records because they purport to reveal  
14 information from confidential peace officer personnel records protected by California Penal Code  
15 § 832.7 and California Evidence Code §§ 1043 and 1046. Plaintiff has been given notice of this  
16 *ex parte* application and agreed to postpone filing the Pitchess Motions until the Court had the  
17 opportunity to consider this application. [Declaration of Kristin Pelletier, ¶ 2.]

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. Plaintiff's Pitchess Motions Reveal Confidential Police Personnel Information In**  
20 **Violation Of Penal Code § 832.7.**

21 Plaintiff is a former Captain with the Burbank Police Department. He contends that, in  
22 the course of his duties, he was involved in various alleged personnel matters and investigations,  
23 and wishes to obtain documents and information pertaining to those investigations in order to  
24 make out his retaliation claims. In the Pitchess Motions, plaintiff discloses information  
25 supposedly revealed in these investigations and contained personnel records in an attempt to show

26 <sup>1</sup> As noted in previous papers filed with this court, the City of Burbank jointly holds the  
27 privilege provided by Penal Code § 832.7 and has an independent right to assert that its officers'  
28 personnel records are privileged and confidential. Davis v. City of Sacramento, 24 Cal.App.4th  
393, 401 (1994).

1 good cause for production of the records themselves.<sup>2</sup> Although the declarations in support of the  
2 Pitchess Motions are made by counsel on information and belief, they plainly set forth  
3 information that plaintiff is claiming he acquired in his role as a manager in the Burbank Police  
4 Department. Once the Pitchess Motions are filed with the Court, they will become a public  
5 record open to inspection by anyone and everyone who chooses to look at them.

6 California Penal Code Section 832.7 provides that peace officer personnel records, **and**  
7 **information obtained from these records**, are privileged and confidential and **shall not be**  
8 **disclosed in any criminal or civil proceeding** except by discovery pursuant to Evidence Code  
9 Section 1043. Penal Code § 832.7 ("peace officer personnel records . . . are confidential and shall  
10 not be disclosed in any criminal or civil proceeding, except by discovery pursuant to Section 1043  
11 of the Evidence Code).<sup>3</sup> This information is protected against disclosure unless a stringent  
12 procedure is followed under Evidence Code §§ 1043 and 1045. City of Santa Cruz v. Superior  
13 Court, 190 Cal.App.3d 1669 (1987). Moreover, this information is protected even if it could be  
14 obtained from another source. Hackett v. Superior Court, 13 Cal.App.4<sup>th</sup> 96, 100 (1993); see also,  
15 City of San Diego v. Superior Court, 136 Cal.App.3d 236, 239 (1981). Furthermore, the privilege  
16 protects, not just the personnel files and records themselves, **but also any information or**  
17 **testimony disclosing the contents of those records**. Hackett, supra, at 101 (party may not ask  
18 interrogatories seeking confidential personnel information unless and until a Pitchess motion is  
19 granted).

20 In Fagan v. Superior Court, 111 Cal.App.4<sup>th</sup> 607, 618-619 (2003), the court held that a  
21 person who acquires confidential police personnel information in the course of his duties is

23 <sup>2</sup> Although much of what is contained in the Motions is grossly inaccurate, plaintiff does,  
24 among other things, disclose the existence of confidential personnel investigations in violation of  
Penal Code § 832.7.

25 <sup>3</sup> In full, California Penal Code Section 832.7(a) states "Peace officer or custodial officer  
26 personnel records and records maintained by any state or local agency pursuant to Section 832.5,  
27 or information obtained from these records, are confidential and shall not be disclosed in any  
28 criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the  
Evidence Code. This section shall not apply to investigations or proceedings concerning the  
conduct of peace officers or custodial officers, or an agency or department that employs those  
officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office."

LA #4841-9120-3591 v1



1 prohibited from subsequently revealing that information unless and until a Pitchess Motion has  
2 been granted. In Fagan, a district attorney reviewed confidential police personnel records as part  
3 of his duties as a prosecutor, as is allowed by Penal Code § 832.7(a). The police officers  
4 thereafter sought, among other things, to prevent the district attorney from publicly revealing  
5 those records in an ongoing criminal proceeding where they were named as defendants. The  
6 Superior Court initially issued a protective order sealing these records, but then dissolved the  
7 order. The Appellate Court issued a preemptory writ compelling the Superior Court to reinstate  
8 its order sealing the personnel records. The Court held that, while the district attorney's initial  
9 access to the records was authorized by the Penal Code, he was prevented by law from  
10 subsequently revealing the contents of those records publicly (in the ongoing court proceedings)  
11 unless and until a court reviewed the matter and authorized the disclosure. Id. at 617-619. See  
12 also, Alford v. Superior Court, 29 Cal.4<sup>th</sup> 1033, 1045-1046 (2003) (access to confidential peace  
13 officer personnel files for one purpose by a party does not allow disclosure of the information to  
14 other parties or in other proceedings; preventing one criminal defendant from revealing Pitchess  
15 materials to another); San Diego Police Officers Assn. v. City of San Diego Civil Service Com., 4  
16 Cal.App.4<sup>th</sup> 275, 284-85 (2002) (civil service commission's public revelation of police officer  
17 personnel information violates Penal Code § 832.7 and affected police officers' constitutional  
18 right to privacy; "Section 832.7's protection would be wholly illusory unless that statute is read to  
19 establish confidentiality status for personnel records in the context of public disciplinary  
20 hearings"); City of Hemet v. Superior Court, 37 Cal.App.4<sup>th</sup> 1411 (1995) (rejecting media's  
21 request for confidential personnel records as violating Penal Code § 832.7, noting that "[l]ogic  
22 does not permit the conclusion that information may be 'confidential' for one purpose, yet freely  
23 disclosable for another).

24 In the present case, plaintiff, through his attorneys and authorized agents, is planning to  
25 publicly reveal alleged personnel information that he supposedly acquired in his role as a  
26 manager in the Burbank Police Department, thereby making that information readily available  
27 and accessible to members of the public. While Taylor's initial access to this information in the  
28 course of his duties was authorized under Penal Code § 832.7(a), his subsequent public revelation  
LA #4841-9120-3591 v1

1 of it is not. Fagan v. Superior Court, supra, at 618-619 (preventing district attorney who gained  
2 access to confidential police personnel records from publicly revealing the contents of those  
3 records in ongoing court proceedings); Alford v. Superior Court, supra, at 1045-1046 (preventing  
4 one criminal defendant who gained access to confidential police personnel information through  
5 Pitchess process from revealing that information to criminal defendants in other proceedings);  
6 San Diego Police Officers Assn. v. City of San Diego Civil Service Com., supra, at 284 (Section  
7 832.7's protection would be wholly illusory unless that statute is read to establish confidentiality  
8 status for personnel records in the context of public hearings). Accordingly, his Pitchess Motions  
9 revealing that information must and should be sealed. Fagan v. Superior Court, supra, at 619  
10 (issuing preemptory writ compelling the Superior Court to issue a protective order sealing  
11 contents of police personnel records).

12 **II. Plaintiff's Pitchess Motions And Related Papers Must And Should Be Sealed**

13 The California Rules of Court set forth the procedure for sealing records that are not  
14 protected from disclosure as a matter of law. However, those **"rules do not apply to records  
15 that are required to be kept confidential by law."** California Rules of Court, Rule 2.550(a)(2).  
16 Here, the alleged personnel information and records set forth in the Motion are protected from  
17 disclosure as a matter of law under Penal Code § 832.7 because they purport to reveal  
18 confidential personnel information of a peace officer. The courts have recognized that the  
19 appropriate remedy to prevent disclosure of confidential police personnel information is to issue  
20 an order sealing the records. Fagan v. Superior Court, supra, at 619.

21 The City of Burbank therefore requests that the Pitchess Motions, including their  
22 attachments, be filed under seal to protect the right to privacy in confidential records which are  
23 protected from disclosure as a matter of law. The City also requests that the Court issue an Order  
24 that the Opposition and Reply Memorandum regarding the Pitchess Motions likewise be filed  
25 under seal. Alternatively, the City requests that the Pitchess Motions and related records be  
26 sealed until such time as it can seek a writ from the Court of Appeal sealing these records. There  
27 is no countervailing interest that counsels against sealing these documents, as there is no

1 prejudice to plaintiff doing so and no benefit in the dissemination of these materials to the public  
2 at large.

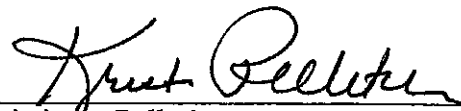
3 CONCLUSION

4 The City of Burbank respectfully requests that the Pitchess Motions filed by plaintiff,  
5 including their attachments, be sealed and only subject to inspection by the parties until such  
6 other lawful Order as may compel their unsealing. In addition, the City requests that the Court  
7 issue an order allowing the Pitchess oppositions and reply papers to likewise be filed under seal.  
8 Alternatively, the City requests that the Pitchess Motions and related records be sealed until such  
9 time as the City can seek a writ from the Court of Appeal sealing these records.

10 Dated: August 26, 2010

Burke, Williams & Sorensen, LLP

11 By:

12 

13 Kristin A. Pelletier.  
14 Attorneys for Defendant  
15 City of Burbank  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3  
4  
5  
6

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

22

23

24

25

25  
26  
27

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

**DEFENDANT'S EX PARTE APPLICATION TO SEAL  
PLAINTIFF'S MOTIONS FOR DISCOVERY OF PEACE  
OFFICER PERSONNEL AND OTHER RECORDS  
REGARDING BURBANK POLICE LIEUTENANT ERIC  
ROSOFF AND FORMER BURBANK POLICE  
LIEUTENANT JAY JETTE OR, ALTERNATIVELY, TO  
SEAL MOTIONS PENDING APPLICATION FOR WRIT TO  
COURT OF APPEAL**

Gregory W. Smith, Esq..  
Los Angeles County Superior Court  
111 N. Hill Street  
Los Angeles, CA 90012

Executed on August 27, 2010, at Los Angeles, California.

Robert J. Tyson

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

**DEFENDANT'S EX PARTE APPLICATION TO SEAL  
PLAINTIFF'S MOTIONS FOR DISCOVERY OF PEACE  
OFFICER PERSONNEL AND OTHER RECORDS  
REGARDING BURBANK POLICE LIEUTENANT ERIC  
ROSOFF AND FORMER BURBANK POLICE  
LIEUTENANT JAY JETTE OR, ALTERNATIVELY, TO  
SEAL MOTIONS PENDING APPLICATION FOR WRIT TO  
COURT OF APPEAL**

Christopher Brizzolara, Esq.  
Los Angeles County Superior Court  
111 N. Hill Street  
Los Angeles, CA 90012

Executed on August 27, 2010, at Los Angeles, California.

Robert J. Tyson



2d Civ. Case No. \_\_\_\_\_

CLERK'S OFFICE  
COURT OF APPEAL SECOND DIST.  
RECEIVED

2010 DEC 30 PM 1:34

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION \_\_\_\_\_

**CITY OF BURBANK, JAY JETTE, AND ERIC ROSOFF,**  
*Petitioners,*

vs.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES,**  
*Respondent.*

**WILLIAM TAYLOR,**  
*Real Party In Interest.*

**PETITION FOR WRIT OF MANDATE, WRIT OF  
PROHIBITION OR OTHER APPROPRIATE RELIEF;  
MEMORANDUM OF POINTS AND AUTHORITIES**

**REQUEST FOR IMMEDIATE STAY OF ORDER PERMITTING  
FILING OF UNSEALED PITCHES MOTIONS CONTAINING  
CONFIDENTIAL PEACE OFFICER PERSONNEL  
INFORMATION AS EARLY AS JANUARY 19, 2011**

Los Angeles Superior Court Case No. BC 422252  
Hon. John Shepard Wiley, Jr., Dept. 50, (213) 974-5673

BURKE, WILLIAMS &  
SORENSEN, LLP  
Kristin A. Pelletier, SBN: 155378  
Robert J. Tyson, SBN: 187311  
444 South Flower Street, Suite 2400  
Los Angeles, California 90071  
Telephone: 213-236-0600  
Facsimile: 213-236-2700

Attorneys for Petitioner City of  
Burbank

STONE BUSAILAH, LLP  
Michael P. Stone, SBN 91142  
200 E. Del Mar Boulevard,  
Suite 350  
Pasadena, California 91105  
Telephone: 626-683-5600  
Facsimile: 626 683-5656

Attorneys for Jay Jette and  
Eric Rosoff



2d Civ. Case No. \_\_\_\_\_

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION \_\_\_\_

---

**CITY OF BURBANK, JAY JETTE, AND ERIC ROSOFF,**  
*Petitioners,*

vs.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES,**  
*Respondent.*

---

**WILLIAM TAYLOR,**  
*Real Party In Interest.*

---

**PETITION FOR WRIT OF MANDATE, WRIT OF  
PROHIBITION OR OTHER APPROPRIATE RELIEF;  
MEMORANDUM OF POINTS AND AUTHORITIES**

**REQUEST FOR IMMEDIATE STAY OF ORDER PERMITTING  
FILING OF UNSEALED PITCHES MOTIONS CONTAINING  
CONFIDENTIAL PEACE OFFICER PERSONNEL  
INFORMATION AS EARLY AS JANUARY 19, 2011**

---

Los Angeles Superior Court Case No. BC 422252  
Hon. John Shepard Wiley, Jr., Dept. 50, (213) 974-5673

---

**BURKE, WILLIAMS &  
SORENSEN, LLP**  
Kristin A. Pelletier, SBN: 155378  
Robert J. Tyson, SBN: 187311  
444 South Flower Street, Suite 2400  
Los Angeles, California 90071  
Telephone: 213-236-0600  
Facsimile: 213-236-2700

Attorneys for Petitioner City of  
Burbank

**STONE BUSAILAH, LLP**  
Michael P. Stone, SBN 91142  
200 E. Del Mar Boulevard,  
Suite 350  
Pasadena, California 91105  
Telephone: 626-683-5600  
Facsimile: 626 683-5656

Attorneys for Jay Jette and  
Eric Rosoff

**CERTIFICATE OF INTERESTED PARTIES**

In addition to the parties to this action, the following persons have an interest in the outcome of the proceedings that the justices should consider in determining whether to disqualify themselves (Cal. Rules of Court, Rule 8.208(e)(2)):

Petitioners, Burbank Police Lieutenants Jay Jette (Retired) and Eric Rosoff, are third parties with an "other" interest herein, as their purported police personnel information will be disseminated to the public if Plaintiff and Real Party in Interest, William Taylor, is not ordered to file his *Pitchess* motions under seal or other appropriate relief is not granted.

Dated: December 30, 2010

Burke, Williams, & Sorensen, LLP

By: 

Robert J. Tyson

Attorneys for Petitioner City of Burbank

Dated: December 19, 2010

Stone Busailah, LLP

By: 

Michael P. Stone

Attorneys for Petitioners Jay Jette and Eric Rosoff

## TABLE OF CONTENTS

	Page
REQUEST FOR IMMEDIATE STAY .....	1
QUESTIONS PRESENTED/INTRODUCTION .....	3
PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF .....	4
Authenticity of Exhibits .....	5
Beneficial Interest of Petitioners .....	5
Chronology of Pertinent Events .....	6
A.    The Allegations in the Lawsuit .....	6
B.    The <i>Pitchess</i> Motions .....	6
C.    The Respondent Court's Denial of the City's <i>Ex parte</i> Application to Seal Plaintiff's <i>Pitchess</i> Motions .....	8
D.    The Respondent Court's Denial of Jette and Rosoff's Motion for Protective Order Sealing Plaintiff's <i>Pitchess</i> Motions. ....	9
Basis for Relief .....	12
Absence of Other Remedies .....	13
PRAYER .....	14
MEMORANDUM OF POINTS AND AUTHORITIES .....	17
I.    INTRODUCTION .....	17
II.   STATEMENT OF FACTS .....	18
III.  STANDARD OF REVIEW .....	19
IV.   POLICE PERSONNEL RECORDS, AND INFORMATION FROM THOSE RECORDS ARE REQUIRED TO BE KEPT CONFIDENTIAL BY <i>PENAL CODE</i> § 832.7 .....	19
A.    Police Personnel Record Confidentiality Is A Vital Legal Interest .....	20
B.    Confidentiality Extends Beyond The Face Of Documents In A Personnel File To Information Contained Within The Confidential Records .....	21

V.	THE RESPONDENT COURT COMMITTED CLEAR LEGAL ERROR IN DENYING THE OFFICERS' MOTION FOR PROTECTIVE ORDER REQUIRING PLAINTIFF'S <i>PITCHESS</i> MOTIONS TO BE FILED UNDER SEAL.....	22
A.	The Respondent Court Erred In Making Findings Required By Rule 2.550 of the <i>California Rules of Court</i> . ....	22
B.	There Is No Inevitability Exception To <i>Penal Code</i> § 832.7.....	24
C.	Neither Vagaries In The Source Of The Disclosure Nor Qualifying Disclaimers Are Bases To Decline To Protect Information Privileged By <i>Penal Code</i> §832.7 .....	25
1.	There is No "Information and Belief" Exception To <i>Penal Code</i> §832.7. ....	26
2.	Plaintiff's <i>Pitchess</i> Motion Pertaining to Jette Is Not Made On "Information and Belief." .....	27
3.	That Witnesses Have Knowledge Of Personnel Record Information Is Not Material To Its Confidentiality. ....	27
D.	A Person With Legal Access to Police Personnel Records Cannot Reveal Their Contents Publicly Unless and Until a <i>Pitchess</i> Motion is Granted. ....	28
VI.	THE COURT SHOULD HAVE GRANTED THE MOTION FOR PROTECTIVE ORDER AND ORDERED BRIEFING ON THE <i>PITCHESS</i> MOTIONS FILED UNDER SEAL. ....	30
A.	<i>Pitchess</i> Motions May Be Filed Under Seal To Protect Confidentiality .....	30
B.	Plaintiff's Motions Would Reveal Extensive Purported Confidential Information .....	31
VII.	PLAINTIFF'S OTHER ARGUMENTS AGAINST SEALING THE MOTIONS ARE BASELESS. ....	32
A.	Sealing These Motions Will Not Affect a Sea Change Requiring All <i>Pitchess</i> Motions To Be Sealed .....	32
B.	There Is No Prejudice To Plaintiff In Having The <i>Pitchess</i> Motions Heard, But Filed Under Seal .....	33
VIII.	CONCLUSION.....	33

# TABLE OF AUTHORITIES

Page

## STATE CASES

<i>Abatti v. Superior Court</i> (2003) 112 Cal.App.4th 39 .....	13
<i>Alford v. Superior Court</i> (2003) 29 Cal. 4th 1033 .....	25, 29, 30
<i>California Highway Patrol v. Superior Court</i> (2000) 84 Cal.App.4th 1010 .....	2, 13, 19
<i>Chambers v. Appellate Div. of Superior Court</i> (2007) 42 Cal. 4th 673 .....	20
<i>City of Hemet v. Superior Court</i> (1995) 37 Cal.App.4th 1411 .....	29
<i>City of San Diego v. Superior Court</i> (1981) 136 Cal.App.3d 236.....	9, 21, 22, 28
<i>City of San Jose v. Superior Court</i> (1998) 67 Cal.App.4th 1135 .....	20
<i>City of Santa Cruz v. Superior Court</i> (1987) 190 Cal.App.3d 1669.....	19
<i>City of Tulare v. Superior Court</i> (2008) 169 Cal.App.4th 373 .....	20
<i>Davis v. City of Sacramento</i> (1994) 24 Cal.App.4th 393 .....	8, 20
<i>Fagan v. Superior Court</i> (2003) 111 Cal.App.4th 607 .....	10, 13, 24, 26, 29, 31
<i>Fletcher v. Superior Court</i> (2002) 100 Cal.App.4th 386 .....	30
<i>Garcia v. Superior Court</i> (2007) 42 Cal. 4th 63 .....	31, 32

<i>Hackett v. Superior Court</i> (1993) 13 Cal.App.4th 96.....	9, 10, 21, 28
<i>Huffy Corp. v. Superior Court</i> (2003) 112 Cal.App.4th 97 .....	23
<i>Kernes v. Superior Court</i> (2000) 77 Cal.App.4th 525 .....	2
<i>NBC Subsidiary (KNBC-TV), Inc. v. Superior Court</i> (1999) 20 Cal. 4th 1178 .....	25
<i>People ex rel. Lockyer v. Superior Court,</i> (2004) 122 Cal.App.4th 1060 .....	2
<i>People v. Mooc</i> (2001) 26 Cal. 4th 1216 .....	20, 30
<i>People v. Superior Court</i> (2000) 78 Cal.App.4th 403 .....	13
<i>Pitchess v. Superior Court</i> (1974) 11 Cal. 3d 531.....	19
<i>Rosales v. City of Los Angeles</i> (2000) 82 Cal.App.4th 419 .....	13
<i>San Diego Police Officers Assn. v. City of San Diego Civil Service</i> <i>Comm'n.</i> (2002) 104 Cal.App.4th 275 .....	29
<i>San Francisco Police Officers' Assn. v. Superior Court</i> (1988) 202 Cal.App.3d 183.....	6
<i>Tien v. Superior Court</i> (2006) 139 Cal.App.4th 528 .....	19
<i>Warrick v. Superior Court</i> (2005) 35 Cal. 4th 1011 .....	2

## STATE STATUTES

### *California Rules of Court*

Rule 2.550 .....	10, 18, 22, 23, 24, 32
Rule 2.550(a)(2) .....	10, 23
Rule 2.550(a)(3) .....	23
Rule 2.550(d) .....	23
Rule 8.493(a) .....	14

### *Code of Civil Procedure*

§ 904.1 .....	13
---------------	----

### *Evidence Code*

§ 1043 .....	1, 2, 3, 4, 7, 9, 10, 11, 12, 13, 17, 19
.....	20, 21, 23, 24, 26, 27, 28
§ 1043(b) .....	19
§ 1045 .....	1, 2, 3, 4, 9, 10, 12, 13, 17, 19
.....	20, 21, 23, 24, 25, 26, 27, 28
§ 1045(d) .....	9, 13, 30, 31
§ 1045(e) .....	12, 25, 30
§ 1046 .....	4, 9

### *Penal Code*

§ 832.7 .....	1, 3, 4, 6, 7, 8, 9, 11, 13, 14, 17, 19
.....	21, 23, 24, 25, 26, 27, 28, 29, 31, 33
§ 832.7(a) .....	29

## REQUEST FOR IMMEDIATE STAY

This case arises out of a clearly erroneous order of the Respondent Superior Court declining to issue a protective order which would have required Plaintiff to file under seal two served, but not yet filed, motions which would purport to disclose extensive details of confidential personnel investigations of two non-party Burbank police officers, Jay Jette and Eric Rosoff. The information that would be disclosed in two publicly filed documents, if the Respondent Court's ruling is not overturned, is police personnel information that is privileged as a matter of law under *Penal Code* §832.7. Plaintiff has not obtained an order allowing discovery, let alone disclosure, of that information pursuant to *Evidence Code* §§1043 and 1045. Given the significant statutory violations and the substantial invasion of privacy rights that will occur without the immediate intervention of this Court, petitioners the City of Burbank ("City"), Jay Jette ("Jette"), and Eric Rosoff ("Rosoff"), seek an Immediate Stay of the December 15, 2010 order of the Respondent Los Angeles County Superior Court, Hon. John Shepard Wiley Jr., denying the motion for a protective order which would have required those motions to be filed under seal, and which denial would allow Plaintiff William Taylor to disclose those officers' purported confidential police personnel information by filing his motions openly. The Respondent Court ordered that Plaintiff would be allowed to file his motions on or after Monday, January 3, 2011, unless this writ petition was already on file, in which case it ordered a January 19, 2011 status conference to determine when Plaintiff would be allowed to file his proposed motions.

The irony of the situation is that the two motions in which Plaintiff seeks to illegally disclose privileged police personnel information are themselves *Pitchess* motions under *Evidence Code* §§ 1043 and 1045 (the "*Pitchess* Motions"). Plaintiff who is a former Captain in the Burbank Police Department, had supervisory responsibility over these investigations and was



privity to their details. Plaintiff ostensibly intends to bring the *Pitchess* Motions to formally seek access to records of these investigations and to inquire into these areas in discovery. Under the guise of explaining the relevance of the investigations to this case, however, he would use the *Pitchess* process against itself by disclosing the purported confidential personnel information without obtaining an order under *Evidence Code* §§1043 and 1045 that would allow him to do so. Perhaps confused by this disclosure within the text of the *Pitchess* Motions, the Respondent Court's order would allow Plaintiff to subvert the *Pitchess* process in this fashion.<sup>1</sup>

Writ review is appropriate where relief is sought from a discovery order which "may undermine a privilege or right of privacy." *California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1018-19. See also, *People ex rel. Lockyer v. Superior Court*, (2004), 122 Cal.App.4th 1060, 1071 (discovery ruling ordering the production of privileged material is reviewable by writ because "there is no way to undo the harm which consists in the very disclosure.") The privacy rights of police officers in their personnel files are substantial, and the denial of a protective order by the Respondent Court will allow an extensive invasion of the privacy rights of the two third-party officers. *Warrick v. Superior Court* (2005) 35 Cal. 4th 1011, 1019. The requested Immediate Stay is necessary since the Respondent Court has denied a protective order and set **January 19, 2011** as the date on which it will consider and could immediately allow Plaintiff to file the offending motions, a date likely before this Court will have had an opportunity to consider this petition. *Kernes v. Superior Court* (2000) 77 Cal.App.4th 525, 531 (immediate stay request is appropriate where disclosure of privileged

---

<sup>1</sup> This is the City's second writ petition as to improprieties in the *Pitchess* process by the Respondent Court in this action. On August 4, 2010, in Case No. B226021, Division Three of this Court issued a stay and *Palma* Notice with respect to an earlier *Pitchess* motion as to which the affected officers had not been notified and in which the Court had ordered disclosure of the records without the required *in camera* inspection.

information has been ordered). The privilege will be irreparably breached by the disclosure of this confidential information in publicly filed motions, and the involved third-party police officers' rights to privacy thereby irreversibly violated, if no stay is granted pending review of this Petition for Writ of Mandate.

### QUESTIONS PRESENTED/INTRODUCTION

May a trial court properly deny a request for a protective order that would have required Plaintiff to file two motions under seal, when those motions would disclose confidential police personnel information in violation of *Penal Code* §832.7 and where there was no previous order under *Evidence Code* §§1043 and 1045 authorizing the discovery and disclosure of this privileged information? Petitioners respectfully submit that the only answer to this question is "No."

The undoubted cause of confusion in the Respondent Court is that Plaintiff's proposed motions containing such improper disclosures are themselves motions under *Evidence Code* §§1043 and 1045 (the "*Pitchess* Motions") seeking formal access to that information. Nevertheless, these not-yet-filed *Pitchess* Motions purport to describe, and would improperly disclose, details of alleged disciplinary investigations of the two third-party officers. As a former Captain with the Burbank Police Department with supervision over internal affairs investigations and access to the files, Plaintiff was once privy to this information. Indeed, the motions purport to describe some of his own actions with regard to these investigations and argue that Plaintiff's involvement therein is the basis for their alleged relevance to this action. As such, under the guise of seeking formal access to these internal affairs records, Plaintiff would improperly publicly disclose their contents without an order allowing him to do so.

By means of this Petition for Writ of Mandate, Prohibition or Other Appropriate Relief ("Petition"), the City, Jette and Rosoff ("Petitioners") seek

review of the December 15, 2010 order issued by the Hon. John Shepard Wiley, Jr. (the "Respondent Court") denying a motion by Jette and Rosoff, as interested third-parties, and joined by the City, seeking a protective order which would require Plaintiff to file his *Pitchess* Motions and all related documents under seal. The Respondent Court's order was clear legal error in violation of *Penal Code* §832.7 because it allows disclosure of confidential police personnel records in a legal proceeding prior to satisfying the compulsory procedures for disclosure of such information set forth in *Evidence Code* §§1043-1045. Moreover, in declining to seal the *Pitchess* Motions, the Respondent Court abdicated its responsibility to protect the confidentiality and privacy rights of the City and the officers whose personnel information would be made public record as a consequence of this ruling.

Absent action by this Court, Petitioners will have their confidentiality and privacy rights violated by the Respondent Court's inaction and the Plaintiff's public filing of those motions without any means of redress. Writ relief is appropriate and necessary because the harm resulting from this violation is irreparable and cannot be corrected by a post-judgment appeal.

**PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION  
OR OTHER APPROPRIATE RELIEF**

1. This Petition seeks a writ directing the Respondent Court to vacate and set aside its order of December 15, 2010 denying the motion by Jette and Rosoff, joined by the City, for a protective order sealing Plaintiff's motion for discovery of personnel and other records pertaining to Jette and Rosoff. Petitioners seek the requested relief because the two *Pitchess* motions Plaintiff intends to file with the Respondent Court contain confidential personnel information protected from disclosure by *Penal Code* §832.7 and *Evidence Code* §§1043-1046. If the motions are filed unsealed, they will become public records and will cause Petitioners to suffer unnecessary annoyance, embarrassment and oppression.

### **Authenticity of Exhibits**

2. All exhibits in the Appendix of Exhibits accompanying this Petition are true and correct copies of original documents on file with the Respondent Court, except Exhibit E, which is a true and correct copy of the original reporter's transcript of the hearing of August 30, 2010 on the City's *Ex Parte* Application to Seal Plaintiff's Motions for Discovery of Peace Officer Personnel and Other Records Regarding Burbank Police Lieutenant Eric Rosoff and Former Burbank Police Lieutenant Jay Jette or, Alternatively, to Seal Motions Pending Application for Writ to Court of Appeal, Exhibit BB, which is a true and correct copy of the original reporter's transcript of the hearing of December 15, 2010 on Jette's and Rosoff's Motion for a Protective Order Sealing Plaintiff William Taylor's Motions for Discovery of Peace Officer Personnel and Other Records Pertaining to Them, or Alternatively, for a Protective Order Pending Application for Writ Relief to Court of Appeal, and Exhibits CC and DD which are true and correct copies of Plaintiff's *Pitchess* Motions served on the City, but not yet filed, and which Jette and Rosoff previously lodged conditionally under seal with the Respondent Court. The exhibits are incorporated herein by reference as though fully set forth in the Petition. The exhibits are tabbed as Exhibits A-DD, and paginated consecutively from page 1 through page 398. Exhibits CC and DD are bound in a separate confidential volume of Exhibits and have been lodged conditionally under seal, subject to the City's application to have them filed under seal with this Court.

### **Beneficial Interest of Petitioners**

3. The City is the defendant in an action now pending in the Respondent Superior Court of the State of California for the County of Los Angeles, entitled *William Taylor v. City of Burbank*, LASC No. BC 422252. Plaintiff, William Taylor, served the City with, but has not yet filed, two

*Pitchess* Motions seeking records of third-parties Jette and Rosoff. Jette and Rosoff moved for a protective order to seal Plaintiff's *Pitchess* Motions and all related documents. The City joined the officers' motion. That motion was denied on December 15, 2010.

4. *Penal Code* §832.7 expressly protects the confidential contents of police personnel files. Further, the Legislature gave employing police agencies, as well as individual officers, the right to refuse to disclose confidential police personnel records. *San Francisco Police Officers' Assn. v. Superior Court* (1988) 202 Cal.App.3d 183, 189.

### **Chronology of Pertinent Events**

#### **A. The Allegations in the Lawsuit**

5. The instant lawsuit for wrongful demotion was filed by Plaintiff in September, 2009. Plaintiff's Complaint contends that he was demoted from the position of Deputy Chief to the position of Captain in May of 2009 by then Chief of Police Tim Stehr in retaliation for his reports of alleged race discrimination and sexual harassment at the Burbank Police Department.<sup>2</sup> [Ex. A.]<sup>3</sup> Plaintiff's First Amended Complaint was deemed filed December 15, 2010. The First Amended Complaint also challenges Plaintiff's subsequent termination.

#### **B. The Pitchess Motions**

6. In an effort to establish evidence to support his retaliation claims against the City, Plaintiff is attempting to obtain documents and information pertaining to personnel matters and investigations in which he was involved

---

<sup>2</sup> Deputy Chief is not a ranked position in Burbank and the City disputes that the removal of the Deputy Chief title constituted a demotion, however, that is not relevant to this Petition.

<sup>3</sup> References to the Exhibits In Support of the Petition for Writ of Mandate, Prohibition or Other Appropriate Relief shall be to the exhibit tab and, where applicable, page and line number as [Ex. \_\_, \_\_:\_\_.]

while employed by the City of Burbank. On August 25, 2010, Plaintiff personally served counsel for the City with two motions pursuant to *Evidence Code* §1043 titled "Motion for Discovery of Peace Officer Personnel and Other Records Regarding Burbank Police Department Lieutenant Eric Rosoff," and "Motion for Discovery of Peace Officer Personnel and Other Records Regarding Burbank Police Department Lieutenant Jay Jette" seeking production of Jette's and Rosoff's personnel files (collectively, the "*Pitchess* Motions") with the Burbank Police Department. [Ex. B, 31:7-13; Exs. CC and DD (the *Pitchess* Motions, conditionally lodged under seal).] The Notice of Motion, Points and Authorities, and Declarations in support of the motions appear to contain a shocking amount of information from personnel and investigation files regarding Jette and Rosoff.<sup>4</sup> Specifically, the *Pitchess* Motions contain Plaintiff's version of allegations made against the officers, details of ensuing investigations including who was involved, who was interviewed, what was said, recommendations Plaintiff made to the Chief, what actions the Chief and others took regarding the officers and Plaintiff, and so on. [See, Ex. CC **lodged under seal**, at Notice 319:11-321:21, Points and Authorities 330:10-21, 333:3-13, 335:13-26, 338:23-24, 342:9-13, Brizzolara Declaration, 343:17-344:9, 344:20-345:24, 346:21-351:16; and Ex. DD **lodged under seal**, at Notice 359:11-361:9, 362:1-7, 21-24, Points and Authorities 366:11-372:8, 373:20-27, 376:5-8, 379:20-26, Brizzolara Decl., 381:10-387:16, 388:17-389:26, 390:16-394:14.]

7. Immediately upon receipt of the *Pitchess* Motions, Counsel for the City reviewed the motions and realized that the motions themselves contained what appeared to be privileged information from Jette's and Rosoff's confidential police personnel files. Although the accuracy of the

---

<sup>4</sup> Although much of what is contained in the motions is inaccurate, Plaintiff, among other things, purports to disclose the existence of confidential personnel investigations in violation of *Penal Code* §832.7, and claims that he was retaliated against because of positions he took on the matters at issue in those alleged investigations.

information in the *Pitchess* Motions was not confirmed, Plaintiff had access to this type of confidential and privileged information as part of his former position with the City, as he was personally involved with internal affairs investigations. [Ex. I, pp100-101, ¶2.] Indeed, according to Plaintiff, his involvement in these investigations is what makes them relevant to his claims of retaliation. [Ex. CC, 333:3-25; Ex. DD, 378:25-379:4.]

8. Ms. Pelletier telephoned Plaintiff's counsel to inquire whether the *Pitchess* Motions had been filed. Plaintiff's counsel advised that the *Pitchess* Motions had not been filed and agreed to postpone filing the motions to allow the City to apply *ex parte* for an order sealing the documents. [Ex. B, 31:13-18.]

**C. The Respondent Court's Denial of the City's *Ex parte* Application to Seal Plaintiff's *Pitchess* Motions.**

9. The City applied *ex parte* for an order requiring that Plaintiff's *Pitchess* Motions and the Declaration of Plaintiff's counsel in support thereof be filed under seal. [Ex. B.] The City had standing to make this motion because it jointly holds the privilege provided by *Penal Code* §832.7 and has an independent right to assert that its officers' personnel records are privileged and confidential. *Davis v. City of Sacramento* (1994) 24 Cal.App.4th 393, 401.

10. On its own motion, the Respondent Court continued the hearing to August 30, 2010. [Ex. C.] On August 30, 2010, Plaintiff filed an opposition to the City's *ex parte* application. [Ex. D.]

11. In its efforts not to disclose the confidential information it was seeking to protect, the City's *ex parte* application provided vague detail as to the actual contents of the offending *Pitchess* Motions. In addition, the City did not openly attach or lodge with the Respondent Court, copies of the motions. However, Counsel for the City had copies of the two *Pitchess* Motions at the hearing and offered to lodge them for the Respondent Court's confidential review. The Court declined. [Ex. E, 53:17-54:19.]

12. Following extensive oral argument, the Respondent Court denied the City's application for an order to seal the records "for want of any factual foundation." [Ex. E, 68:24-69:3; Ex. F.] The Court at first denied the City's request to make an appropriate order to allow the City to address the issue on a noticed motion basis with a more full record. [Ex. E, 65:9-67:1.] The Respondent Court also stated that the City could file a writ seeking appellate guidance on this matter. [Ex. E, 67:2-12.]

13. However, a few minutes later in the same hearing, in response to a request from counsel for the officers, the Respondent Court agreed to allow Jette and Rosoff time to file a noticed motion for protective order pursuant to *Evidence Code* §1045(d), and Plaintiff was ordered not to file his *Pitchess* Motions at least until after that motion was heard. [Ex. E, 74:21-78:14.] The City indicated on the record that it would join in the officers' motion. [Ex. E, 80:18-19.] Thus, a writ was not necessary unless and until the Respondent Court denied this noticed motion for a protective order.

**D. The Respondent Court's Denial of Jette and Rosoff's Motion for Protective Order Sealing Plaintiff's *Pitchess* Motions.**

14. On September 22, 2010, Jette and Rosoff filed a motion pursuant to *Evidence Code* §1045 seeking a protective order sealing Plaintiff's *Pitchess* Motions; or alternatively, for a protective order pending application for writ relief to the Court of Appeal. [Exs. G-I.] The City joined in this motion. [Ex. J.] Jette and Rosoff also filed *ex parte* applications to conditionally lodge Plaintiff's *Pitchess* Motions under seal so that the Respondent Court could review the offending motions before ruling on their §1045 motion for a protective order. [Exs. K-Q.] The City also joined in the *ex parte* applications. [Ex. R.] The §1045 motion was made on grounds that police personnel records are privileged and confidential and "shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to §§1043 and 1046 of the *Evidence Code*." *Penal Code* §832.7. Moreover, this information is protected even if it could also be obtained from a different



source outside the personnel file. *Hackett v. Superior Court* (1993) 13 Cal.App.4<sup>th</sup> 96, 100; *see also City of San Diego v. Superior Court* (1981) 136 Cal.App.3d 236, 239. Thus, the privilege protects not just the personnel files and records themselves, but also any information or testimony disclosing the contents of those records. *Hackett, supra*, 13 Cal.App.4<sup>th</sup> at 101.

15. The law holds that a party may not circumvent *Evidence Code* §§1043 and 1045 by using confidential police officer information that the party learned when s/he had lawful access to it in another capacity unless and until a *Pitchess* motion has been granted. *Fagan v. Superior Court* (2003) 111 Cal.App.4<sup>th</sup> 607, 618-619. This is precisely what Plaintiff is attempting to do, by using information he gained legitimately during his employment with the City in order to establish good cause to discover Jette's and Rosoff's personnel records in his *Pitchess* Motions. Plaintiff filed an opposition to Jette and Rosoff's §1045 motion on October 5, 2010 [Ex. V], and Jette and Rosoff filed a reply on October 13, 2010. [Ex. W.] The City joined in the reply. [Exs. X-Y.]

16. On October 14, 2010, the Respondent Court, on its own motion, continued the hearing on that motion until December 6, 2010. [Ex. Z.] When the parties appeared for the hearing on the §1045 motion on December 6, 2010, the Respondent Court was not prepared to rule and continued the hearing to December 15, 2010.

17. On December 15, 2010, the Respondent Court denied Jette's and Rosoff's motion on grounds that the interests of the City, Jette, and Rosoff in maintaining the confidentiality of the police personnel records, while legitimate and perhaps significant [Ex. AA; Ex. BB, 303:16-24], was outweighed by three factors. First, the Respondent Court found that the principle of American jurisprudence of public access to the courts outweighs the interests of the City and the officers in maintaining the confidentiality of the police personnel records. [Ex. BB, 303:26-304:20]. This finding is based on the first of five factors set forth in Rule 2.550(d) of the *California Rules of*

Court ("CRC"), pertaining to sealing records. Rule 2.550 expressly does not apply to records that are required to be kept confidential by law or to discovery motions, and thus, the Respondent Court's finding on this basis is in error, and an abuse of discretion.

18. Second, the Respondent Court found that Petitioners' interests in maintaining the confidentiality of the police personnel files was outweighed by its opinion that Plaintiff's contentions made in the *Pitchess* Motions are not necessarily true. [Ex. BB, 304:21-307:15.] Whether Plaintiff's contentions may ultimately prove to be false or irrelevant, and whether those contentions are qualified by a disclaimer acknowledging that they may be incorrect in some respects, does not cure the invasion of privacy that will result from the public disclosure of allegations Plaintiff affirmatively claims were made against the officers.

19. Third, the Respondent Court held, without ruling on the *Pitchess* Motions themselves<sup>5</sup>, that the information contained in the motions will come out at trial in any event. [*Id.*] In making these three findings, the Respondent Court ignored the mandate of *Penal Code* §832.7 that expressly provides that police personnel records are to remain confidential unless and until the *Pitchess* procedures have been satisfied. Further, the Respondent Court ignored the fact that the parties are still in the discovery stage of litigation and that there may never be a trial, and there is no harm to Plaintiff in maintaining the status quo and ordering the *Pitchess* Motions to be filed under seal, at least conditionally until the Respondent Court has had an opportunity to rule on them. Finally, the Respondent Court ignores the fact that even *if* he grants the *Pitchess* Motions, which should not be viewed as a certainty, he may find little or nothing in his *in camera* review to be ordered produced to Plaintiff,

---

<sup>5</sup> The Respondent Court noted that the *Pitchess* Motions were lodged conditionally under seal and made clear that it had read them. [Ex. BB, 298:3-9.]

and even if documents are produced to Plaintiff, they could be ordered to remain under seal and subject to a protective order pursuant to *Evidence Code* §1045(e).<sup>6</sup>

20. The Respondent Court has ordered that Plaintiff may file the *Pitchess* Motions on January 3, 2011, if Petitioners do not file a petition for writ of mandate by the previous court day—December 30, 2010. A Status Conference is scheduled for January 19, 2011, to determine whether any action had been taken by this Court and whether Plaintiff can be allowed to otherwise file his *Pitchess* Motions. [Ex. BB, 307:25-308:12.]

### **Basis for Relief**

21. The issue presented in this Petition is whether the Respondent Court's December 15, 2010 order must be reversed because it permits Plaintiff to violate Jette's and Rosoff's statutory rights in the confidential contents of their respective police personnel records, as well as the right to confidentiality that the City has in such records. Specifically, writ relief is appropriate because Plaintiff's *Pitchess* Motions seeking discovery of personnel records of Jette and Rosoff purport to contain privileged and confidential information that must not be disclosed unless and until the parties have complied with the strict procedure set forth in *Evidence Code* §§1043-1045. Plaintiff's *Pitchess* Motions, if filed unsealed, will let the proverbial cat out of the bag [Ex. E, 68:19-22,] causing Petitioners to suffer unnecessary annoyance, embarrassment and oppression.

---

<sup>6</sup> *Evidence Code* §1045(e) states: "The court shall, in any case or proceeding permitting the disclosure or discovery of any peace or custodial officer records requested pursuant to Section 1043, order that the records disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law."

### Absence of Other Remedies

22. The Respondent Court's order permitting the *Pitchess* Motions to be filed unsealed is not appealable. *Code of Civil Procedure* §904.1. Writ review is appropriate when the petitioner seeks relief from a discovery order which may undermine a right of privacy, such as an order resulting in disclosure of confidential police personnel records, because post-judgment appellate remedies are not adequate to redress the erroneous disclosure of private information. *California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1018 (granting writ review of order granting a *Pitchess* motion); see also *Abatti v. Superior Court* (2003) 112 Cal.App.4th 39, 49 (writ review proper for denial of a *Pitchess* motion). Moreover, writ review of orders on *Pitchess* motions is appropriate because the confidentiality provisions of *Penal Code* §832.7 and the procedures for obtaining disclosure of such records under *Evidence Code* §§1043 and 1045 are the "only protections available" to officers to safeguard the privacy of their records, because a violation of §832.7 is not actionable for damages. *Fagan v. Superior Court, supra*, 111 Cal.App.4th at 614 (citing *Rosales v. City of Los Angeles* (2000) 82 Cal.App.4th 419, 427-428). There will be no other recourse for Petitioners after Plaintiff's *Pitchess* Motions are filed unsealed. If this Court does not act on this Petition, confidential information pertaining to Jette and Rosoff will be made public record, and they and the City will suffer unnecessary annoyance, embarrassment or oppression.

23. Writ review is also appropriate for issues of first impression that are of general importance to the trial courts and to the legal profession, and where general guidelines can be laid down for future cases. *California Highway Patrol, supra*, 84 Cal.App.4th at 1018; *People v. Superior Court* (2000) 78 Cal.App.4th 403, 413. This case presents a rare situation seemingly not covered by existing case law, if not an issue of first impression, where the moving party knows the contents of some of the confidential police personnel information to which he seeks formal access, and improperly purports to

disclose that confidential information in the text of the *Pitchess* Motions themselves. It appears that this Court needs to provide guidance to the trial courts concerning the propriety of issuing a protective order or ordering motions filed under seal pursuant to *Evidence Code* §1045(d), when the motions themselves contain information that if disseminated or disclosed in a publicly filed document, will violate police officer privacy protected under *Penal Code* §832.7.

### PRAYER

Petitioners City of Burbank, Jay Jette, and Eric Rosoff pray that this Court:

1. Issue an alternative writ directing the Respondent Court to set aside or vacate its order of December 15, 2010 denying Jette's and Rosoff's motion for a protective order and commanding said court to grant said motion and issue a protective order requiring that Plaintiff's *Pitchess* Motions as to Jette and Rosoff be filed under seal, as well as all declarations and attachments thereto, all other supporting papers, and all papers filed in opposition and reply; or alternatively directing the Respondent Court to show cause why such relief should not be granted; and upon return of the alternative writ, issue a peremptory writ of mandate and/or prohibition or such other extraordinary relief as is warranted; and

2. Award Petitioners their costs pursuant to Rule 8.493(a) of the *California Rules of Court*; and

3. Grant such other relief as may be just and proper

Dated: December 30, 2010

Burke, Williams, & Sorensen, LLP

By: 

Robert J. Tyson

Attorneys for Petitioner City of Burbank

Dated: December 29, 2010

Stone Busajlah, LLP

By: 

Michael P. Stone

Attorneys for Petitioners Jay Jette and  
Eric Rosoff

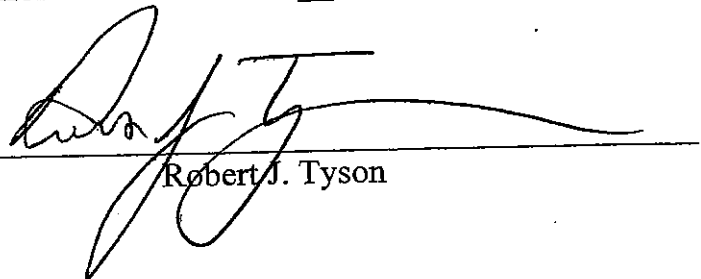
## VERIFICATION

I, Robert J. Tyson, declare as follows:

I am an attorney at law duly admitted to practice in the State of California and a partner in the firm of Burke, Williams & Sorensen, LLP, counsel of record for Petitioner in this action.

I verify this Petition because I am the person most familiar with the records and proceedings in the case, because I am the partner at my firm with responsibility for the defense of this action, and because I am a custodian of my firm's files for this matter. I have read the allegations of the Petition and know their contents. The exhibits attached to the Petition are true and accurate copies of the pleadings and papers in this action. As to other matters described in the Petition, the statements of the parties' contentions and the Respondent Court's rulings are based on the statements made in the parties' briefing and in the Respondent Court's order, all of which I have reviewed. The material provisions of the briefing and order are all part of the official court record of this action in the Respondent Court. I have personal knowledge of the remaining allegations of the Petition or they are statements of my opinion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed at Los Angeles, California on December 30, 2010.



Robert J. Tyson

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

This case presents a rare and troubling scenario where a former police captain would use the filing of *Pitchess* Motions to violate two third-party officers' statutory rights to confidentiality instead of using them as part of the process to protect those rights. In denying a motion for a protective order and thereby permitting two *Pitchess* motions to be filed unsealed, the Respondent Court will effectively allow police personnel information that would remain confidential under any other circumstances to become part of the public domain in contravention of the strict statutory mechanisms established to protect police personnel records set forth in *Penal Code* §832.7 and *Evidence Code* §§1043-1045. This Court's review and guidance is necessary.

William Taylor, the Plaintiff in the underlying matter ("Plaintiff"), was a Captain in the Burbank Police Department with review and oversight of internal investigations of allegations of misconduct against police officers for Defendant and Petitioner, City of Burbank (the "City"). Due to his involvement in Internal Affairs, Plaintiff has unique knowledge of the contents of the personnel and Internal Affairs records pertaining to various investigations at Burbank, including those pertaining to third-parties and petitioners, former Burbank Police Lieutenant Jay Jette ("Jette") and Burbank Police Lieutenant Eric Rosoff ("Rosoff"). Plaintiff seeks to file two *Pitchess* Motions to obtain personnel and investigation records pertaining to Jette and Rosoff. Specifically, Plaintiff uses what purports to be privileged information from Jette's and Rosoff's files, gained through his employment with the Burbank Police Department<sup>7</sup> and ineffectively disguised as allegations on his attorney's information and belief, to attempt to establish the materiality and

---

<sup>7</sup> Plaintiff has disingenuously suggested that at least some of his information came from other sources. Nevertheless, the number of ultimate sources of the disclosed information does not lessen the violation of Jette's and Rosoff's rights.



good cause required for *Pitchess* motions.

On August 25, 2010, Plaintiff served the two *Pitchess* Motions on the City seeking discovery of personnel and other records pertaining to Jette and Rosoff. Plaintiff agreed not to file the motions until the City could seek *ex parte* relief.

On August 27, 2010 the City made an *ex parte* application for an order sealing Plaintiff's *Pitchess* Motions, and on August 30, 2010, the Respondent Court denied Petitioner's *ex parte* application on grounds that it lacked sufficient information to do so. However, the Respondent Court allowed the officers time to file a regularly noticed motion for a protective order, ordering Plaintiff to further refrain from filing the motions. The City joined in the officers' motion. On December 15, 2010, the Respondent Court denied the motion filed by Jette and Rosoff, thereby permitting Plaintiff to file the *Pitchess* Motions unsealed.

In making its December 15, 2010 ruling, the Respondent Court committed error by considering and making its ruling based upon the factors set forth in Rule 2.550 of the *California Rules of Court*, a rule that expressly does not apply in this scenario. The Respondent Court also abused its discretion by permitting the disclosure of the privileged and confidential information contained in Plaintiff's *Pitchess* Motions, without ruling on the motions themselves. Finally, the Respondent Court's order is highly prejudicial to, and invades the privacy rights of the Petitioners, and will result in unnecessary annoyance, embarrassment and oppression.

## **II. STATEMENT OF FACTS**

The relevant facts are set forth in paragraphs 5 through 20 of the Petition and are incorporated herein by this reference.

### III. STANDARD OF REVIEW

Where a trial court makes factual findings concerning privilege, the reviewing court defers to those findings if they are supported by substantial evidence. However, where, as here, the facts are undisputed, the privilege claim is one of law which is reviewed *de novo*. *Tien v. Superior Court* (2006) 139 Cal.App.4th 528, 535.

### IV. POLICE PERSONNEL RECORDS, AND INFORMATION FROM THOSE RECORDS ARE REQUIRED TO BE KEPT CONFIDENTIAL BY PENAL CODE § 832.7

California *Penal Code* §832.7 provides that police personnel records, and information obtained from those records, are privileged and confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to *Evidence Code* §1043. This information is protected against disclosure unless a stringent procedure is followed under *Evidence Code* §§1043 and 1045. *City of Santa Cruz v. Superior Court* (1987) 190 Cal.App.3d 1669.

The well established procedure for a party to obtain access to the confidential police personnel records is a two step process. First, “the moving party must submit a written motion which contains ‘[a] description of the type of records or information sought,’ supported by ‘[a]ffidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that such governmental agency identified has such records or information from such records.’” *Evid. Code* §1043(b); *California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1020. This procedure was first established by the California Supreme Court in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, and so the motion brought under *Evidence Code* §1043 is often referred to as a “*Pitchess* motion.” Once the moving party has made a showing of good cause for disclosure of the police personnel records,

the trial court conducts an *in camera* review to determine whether the records have any relevance to the issues presented in the current proceedings. *Evid. Code* §1045; *City of San Jose v. Superior Court* (1998) 67 Cal.App.4th 1135, 1143-1144. Even if the court orders some documents to be disclosed, it still has power and a duty to issue an appropriate protective order. *Id.*

**A. Police Personnel Record Confidentiality Is A Vital Legal Interest.**

The Respondent Court's paramount concern regarding confidential police personnel information should have been to protect Jette's and Rosoff's legitimate expectation of privacy in their personnel records and information contained in those records. *People v. Mooc* (2001) 26 Cal.4th 1216, 1219-1220. The City itself also has a privacy interest in the confidentiality of its officers' personnel records which must be protected as well. *Davis v. City of Sacramento* (1994) 24 Cal.App.4th 393, 401.

"Police records are confidential for a reason, and their disclosure must be appropriately guarded." *City of Tulare v. Superior Court* (2008)-169 Cal.App.4th 373, 383 (reiterating the importance of a properly noticed *Pitchess* motion in light of the "strong legislative intent to protect a party's right to a fair trial and the officer's interest in privacy to the fullest extent possible.") The "relatively low threshold for discovery" embodied in §1043 is offset by *Evidence Code* §1045's protective provisions which, among other things, "issue a forceful directive to the courts to consider the privacy interests of the officers whose records are sought and take whatever steps 'justice requires' to protect the officers from 'unnecessary annoyance, embarrassment or oppression.'" *Chambers v. Appellate Div. of Superior Court* (2007) 42 Cal.4th 673, 680.

It is this forceful directive that Petitioners implore this Court to follow. The Respondent Court has declined to protect the confidential police personnel information, notwithstanding that a *Pitchess* motion as to these officers has not yet been filed, briefed, argued, or granted.

**B. Confidentiality Extends Beyond The Face Of Documents In A Personnel File To Information Contained Within The Confidential Records**

The privilege under *Penal Code* §832.7 protects not just the personnel files and records themselves, but also any information or testimony disclosing the contents of those records. *Hackett v. Superior Court* (1993) 13 Cal.App.4th 96, 101 (party may not ask interrogatories seeking confidential personnel information unless and until a *Pitchess* motion is granted); *City of San Diego v. Superior Court* (1981) 136 Cal.App.3d 236, 239 (party cannot evade compliance with *Pitchess* procedure by asking the officers questions about their disciplinary history at deposition). Thus, if information is contained in police personnel records, it is confidential and may not be disclosed even from other sources, including the testimony of witnesses or parties.

In *Hackett, supra*, the plaintiff served the defendant police officer with interrogatories asking for his home address, telephone number, place of birth, driver's license number, and educational background. Clearly, the officer would not have to refer to his personnel file to provide this information. However, the *Hackett* court reviewed the plain language and legislative history of the statute and held that it was clear that the privilege in *Penal Code* §832.7 applies to all information in an officer's personnel file, and there is no exception for information that could also be obtained "from the officer or elsewhere." *Id.*, at 101.

In *City of San Diego, supra*, the Court of Appeal rejected attempts to evade compliance with *Evidence Code* §§1043 and 1045 by asking the officers questions about their disciplinary history at deposition. The court explained that a litigant may not obtain indirectly what is directly privileged and immune from discovery. The statutes which protect personnel records and information from such records also protect the identical information about personnel history which is within the officers' personal recollections. "There would be

no purpose to protecting such information in the personnel records if it could be obtained by the simple expedient of asking the officers for their disciplinary history orally.” *City of San Diego, supra*, 136 Cal.App.3d at 239.

V. **THE RESPONDENT COURT COMMITTED CLEAR LEGAL ERROR IN DENYING THE OFFICERS’ MOTION FOR PROTECTIVE ORDER REQUIRING PLAINTIFF’S PITCHESS MOTIONS TO BE FILED UNDER SEAL**

A. **The Respondent Court Erred In Making Findings Required By Rule 2.550 of the California Rules of Court.**

The Respondent Court denied Jette’s and Rosoff’s motion for a protective order to seal the *Pitchess* Motions on three grounds. The first was its finding that the public’s interest in access to the court’s records and operations outweighs the City’s and officers’ interests in maintaining the privacy of police personnel records. [Ex. BB, 303:15-304:20.] This finding tracks with the first of five factors courts are asked to weigh and consider when determining whether to seal records under Rule 2.550 of the *California Rules of Court* (“CRC”)<sup>8</sup> which Plaintiff asked the Court to apply. [Ex. V, 202:1-206:16.] The Respondent Court’s finding is in error, however, because Rule 2.550 does not apply and should have played no role in the Respondent Court’s consideration of Jette’s and Rosoff’s motion.<sup>9</sup>

---

<sup>8</sup> Rule 2.550(d) provides that a court may order that a record be filed under seal if the facts establish that: (1) there exists an overriding interest that overcomes the right of public access to the record; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest.

<sup>9</sup> Whether Rule 2.550 applies here was extensively briefed by the parties [Ex. B, 29:12-20; Ex. D, 43:12-47:16; Ex. G, 91:17-92:3; Ex. V, 202:1-206:16; Ex. W, 216:6-16; Ex. X, 278:16-25], and argued at the hearing on August 30, 2010 [Ex. E, 51:15-27]. Plaintiff’s arguments regarding Rule 2.550 oscillate between Rule 2.550 being inapplicable and thus the motions cannot be filed

Rule 2.550 sets forth the procedure for sealing records that are not otherwise protected from disclosure as a matter of law. Those “rules do not apply to records that are required to be kept confidential by law [or] to discovery motions and records filed or lodged in connection with discovery motions or proceedings.” CRC, Rule 2.550(a)(2) and (3). Since *Pitchess* motions are discovery motions, and the source of much of the information in the motions is police personnel records which are required to be kept confidential under *Penal Code* §832.7, Rule 2.550 clearly does not apply. See, *Huffy Corp. v. Superior Court* (2003) 112 Cal.App.4th 97, 108 (“A document which is protected by the lawyer-client privilege is not subject to the rule 243.1 *et seq.* [predecessor to Rule 2.550(a)(2)] findings requirements.”) Consequently, the Respondent Court need not and should not have made findings pursuant to Rule 2.550(d). By doing so, the Respondent Court committed a clear error.

Moreover, even if the findings set forth in Rule 2.550(d) were required (which they are not), 2.550(d) was satisfied, and the Respondent Court erred in finding otherwise. The Respondent Court ostensibly engaged in a balancing of interests and ruled that the public’s right of access to the court outweighs the officers’ privacy rights. [Ex. BB, 303:26-304:9.] However, the Respondent Court’s ruling contravenes the balancing performed by the Legislature in enacting *Penal Code* §832.7 and *Evidence Code* §§1043 and 1045 which strictly mandate that police personnel information be kept confidential in any civil or criminal proceeding unless and until a *Pitchess* motion is granted.

Jette’s and Rosoff’s overriding interest in the privacy and confidentiality of their records requires that the briefing and exhibits as to these *Pitchess* Motions must be filed under seal at least until the Respondent Court can make a substantive ruling on the *Pitchess* Motions. Sealing the *Pitchess* Motions will have no impact on the Respondent Court’s consideration

---

under seal, and Rule 2.550 is applicable and Jette and Rosoff have not satisfied the findings required under the rule. Both are incorrect.

of or the substantive relief sought in the motions, the public has no right to access to confidential personnel information (and is expressly prohibited by statute from having such access), Plaintiff will not be prejudiced by this measure, and the relief requested by Petitioners is narrowly tailored to protect their privacy rights in the least restrictive way possible.

Rule 2.550 has no bearing on whether the Respondent Court can and should have ordered that Plaintiff's *Pitchess* Motions and all related documents be filed under seal, and the Respondent Court erred in denying relief based on Rule 2.550.

**B. There Is No Inevitability Exception To Penal Code §832.7**

The second basis for its ruling denying the motion for a protective order was the Respondent Court's rationalization that the information was going to come out at trial anyway. The Respondent Court opined that "there's no way of stopping it" [Ex. BB, 299:28-300:11], and "the facts will come out." [Ex. BB, 304:21-305:21.] In essence, the court simply threw up its hands in exasperation and declined to exercise its duty to protect the statutorily-mandated confidentiality of Jette's and Rosoff's personnel information now, because it feels that the information inevitably will be publicly aired at a trial in any event. There is no legal authority to support the Respondent Court's failure to follow the law and failure to protect the clear statutory interests at stake upon such a ground.

Even more troubling, however, is that instead of deciding whether to protect confidentiality while considering the *Pitchess* Motions, the Respondent Court has essentially pre-determined its ruling thereon before even receiving, let alone reviewing, any substantive opposition. Police personnel information may not be disclosed unless and until all of the procedures of *Evidence Code* §§1043 and 1045 have been followed. *Penal Code* §832.7; *Fagan v. Superior Court* (2003) 111 Cal.App.4<sup>th</sup> 607, 613-614. And even if the police personnel information is ordered produced in discovery, it may remain concealed from

public view pursuant to a protective order. *Evid. Code* §1045(e); *Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1053 (“*Evidence Code* section 1045, subdivision (e) requires issuance of an order preventing use of *Pitchess* material outside the ‘court proceeding’ in which it was obtained.”) Thus, the Respondent Court’s inevitability finding as a basis for allowing such disclosure is clear legal error.

The argument is also a giant red herring. All or many parts of the purported confidential police personnel information that would unnecessarily be disclosed now in Plaintiff’s motions, might never be disclosed publicly at any later point in the case. That information might be pared down, or eliminated entirely from relevance by any of the following: 1) the ruling on the *Pitchess* Motion itself, which could find only some (or even none) of this information appropriate for disclosure; 2) pre-trial motions including motions for summary adjudication which might eliminate the legal theories related to this information; 3) pre-trial rulings including motions *in limine* which might properly exclude all or some of such information from trial; and finally 4) any dispositive motion or out of court settlement that eliminates the need for the trial altogether. In addition, courtrooms can be sealed during a portion of a trial if necessary to protect an overriding legal interest (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4<sup>th</sup> 1178, 1217-1218), such as, perhaps, the statutory rights to confidentiality of third-party police officers. Thus, it is simply impossible to predict that any particular information disclosed now will inevitably be aired publicly at trial, and clear legal error deny relief based upon a presumption otherwise.

C. **Neither Vagaries In The Source Of The Disclosure Nor Qualifying Disclaimers Are Bases To Decline To Protect Information Privileged By Penal Code §832.7**

The third tenet of the Respondent Court’s erroneous denial of the motion for a protective order was the assertion that the information was only alleged on information and belief, may have come from various miscellaneous



sources other than Plaintiff himself, and will, according to the Respondent Court, come out in trial and deposition through cross-examination of witnesses. [Ex. BB, 304:28-307:14.]

This argument breaks down into two clearly erroneous legal precepts. First, the Respondent Court proffers that it is legally permissible to violate the confidentiality of *Penal Code* §832.7, as long as in doing so you qualify the factual assertions by stating them on “information and belief.” Second, the Court believes that *Penal Code* §832.7 does not apply to witnesses’ knowledge of information contained in confidential police personnel records.

1. **There is No “Information and Belief” Exception To *Penal Code* §832.7.**

There is no exception to *Penal Code* §832.7 allowing Plaintiff to violate the confidentiality requirements of that section, or purport to, as long as the information is revealed with the disclaimer “on information and belief.” Indeed, this spurious legal argument if applied broadly, could eviscerate any attempt to ever maintain the privilege or confidentiality of any disputed information in California courts.

This finding emanates out of a misguided argument by Plaintiff wherein he tried to extrapolate support from cases noting that *Pitchess* motions can be supported by a declaration of counsel made on information and belief. [Ex. D, 36:11-37:14; Ex. V, 192:18-193:11.] Procedurally, that is correct—*Pitchess* motions can be supported with a declaration made on information and belief. However, that does not permit a party to violate *Penal Code* §832.7 by publicly disclosing confidential police personnel information in the substance of that declaration, or any other papers filed with the Court, until after a *Pitchess* motion has been granted. *Penal Code* §832.7; *Evid. Code* §§1043, 1045; *Fagan, supra*, at 613-614.

As such, it was clear legal error for the Respondent Court to deny a protective order on the ground that the information was qualified as “on information and belief.”

2. **Plaintiff's Pitchess Motion Pertaining to Jette Is Not Made On "Information and Belief."**

In any event, the arguments that some contentions are made on counsel's information and belief is greatly exaggerated. None of Plaintiff's statements in the *Pitchess* Motion regarding Jette are made on information and belief. Indeed, none of Plaintiff's averments regarding Jette in the Points and Authorities, and Declaration of Christopher Brizzolara, are qualified in any way. [Ex. CC.] In addition, the Notice for both *Pitchess* Motions contain what purports to be a list of requested documents, but the description of many of the documents requested disclose what appears to be privileged and confidential information, none of which is qualified by counsel's information and belief. [See, Ex. CC, 319:10-324:22; Ex. DD, 359:10-363:15.]

It appears Plaintiff has taken every opportunity in these *Pitchess* Motions to use and disseminate his account of confidential personnel information regarding Jette and Rosoff, in utter disregard for *Penal Code* §832.7 and *Evidence Code* §§1043 and 1045. In order to prevent this abuse of process from occurring, and in order to safeguard the Petitioners' rights and legitimate expectations of privacy in their personnel records, particularly before the Respondent Court has even considered any opposition to and ruled upon the motions, the *Pitchess* Motions must be filed under seal.

3. **That Witnesses Have Knowledge Of Personnel Record Information Is Not Material To Its Confidentiality.**

Finally, the Respondent Court relied upon the assertion that it "appeared" that Plaintiff's counsel had acted more like "journalists" in gathering information from sources other than Plaintiff.<sup>10</sup> The Respondent

---

<sup>10</sup> There is no basis in the evidence submitted to the Court for this finding that information was gathered from any source other than Plaintiff. The *Pitchess* Motions repeatedly refer to facts as reported by Plaintiff, and what Plaintiff observed, thought and did. [Ex. CC, 330:10-11, 330:18-331:9; Ex. DD, 372:2-23.] Moreover, Plaintiff argued that the information was only relevant to this action because of Plaintiff's involvement in the investigations. [Ex. CC,

Court similarly purported to hold that this information would come out in testimony at deposition or trial anyway. [Ex. BB, 305:28-307:14.] This is, again, clear legal error because, as stated above, the privilege under *Penal Code* §832.7 protects not just the personnel files and records themselves, but also any information or testimony disclosing the contents of those records. *Hackett v. Sup. Ct., supra*, 13 Cal.App.4th at 101 (party may not ask interrogatories seeking confidential personnel information unless and until a *Pitchess* motion is granted); *City of San Diego v. Sup. Ct., supra*, 136 Cal.App.3d at 239 (“There would be no purpose to protecting such information in the personnel records if it could be obtained by the simple expedient of asking the officers for their disciplinary history orally.”)

Thus, it does not matter that Plaintiff only describes this information and did not attach records from the personnel files to his motions. Nor does it matter whether the information disclosed in Plaintiff’s moving papers came directly out of Jette’s and Rosoff’s personnel files, came out of Plaintiff’s imperfect memory, or came from some other ‘gathered’ source. The information is confidential and privileged regardless. The Respondent Court should have acted to protect that confidentiality and granted the Motion for Protective Order. It was clear legal error for it to decline to do so.

**D. A Person With Legal Access to Police Personnel Records Cannot Reveal Their Contents Publicly Unless and Until a Pitchess Motion is Granted.**

The reason that both Plaintiff and the Respondent Court sought to distance the factual disclosures from Plaintiff’s unclean hands is starkly transparent. It is well established that a party may not circumvent *Evidence Code* §§1043 and 1045 by using confidential police personnel information that the party learned when s/he had lawful access to it in another capacity. Even such lawfully obtained information may not be publicly disclosed unless a *Pitchess* motion has been granted. *Fagan v. Superior Court* (2003) 111

Cal.App.4<sup>th</sup> 607, 618-619.

In *Fagan*, a district attorney reviewed confidential police personnel records as part of his duties as a prosecutor, as is allowed by *Penal Code* §832.7(a). The affected police officers thereafter sought, among other things, to prevent the district attorney from publicly revealing those records in a separate, ongoing criminal proceeding where they were named as defendants. The Superior Court initially issued a protective order sealing these records, but then dissolved the order. The Appellate Court issued a preemptory writ compelling the Superior Court to reinstate its order sealing the personnel records. The court held that, while the district attorney's initial access to the records was authorized by the *Penal Code*, he was prevented by law from subsequently revealing the contents of those records publicly in the court proceedings unless and until a court reviewed the matter and authorized the disclosure. *Id.* at 617-619.

Similarly, in *Alford v. Superior Court* (2003) 29 Cal.4<sup>th</sup> 1033, 1045-1046, the court held that a criminal defendant who has properly gained access to police personnel file information through a *Pitchess* motion may not disclose that information to other parties in other proceedings. Likewise, in *San Diego Police Officers Assn. v. City of San Diego Civil Service Comm'n.* (2002) 104 Cal.App.4<sup>th</sup> 275, 284-85, a civil service commission that heard administrative appeals of police officer discipline was ordered by the Court of Appeal not to reveal police personnel information in public hearing: "Section 832.7's protection would be wholly illusory unless that statute is read to establish confidentiality status for personnel records in the context of public disciplinary hearings." *See also City of Hemet v. Superior Court* (1995) 37 Cal.App.4<sup>th</sup> 1411 (rejecting media's request for confidential personnel records as violating *Penal Code* §832.7, noting that "[l]ogic does not permit the conclusion that information may be 'confidential' for one purpose, yet freely disclosable for another).

Thus, Plaintiff has no authority to publicly disclose confidential police

personnel information he learned on the job. In fact, as there is no guarantee that the Respondent Court will grant Plaintiff's motions, Plaintiff might never be given such authority. Indeed, any documents provided to the Respondent Court for *in camera* review and the transcript of the *in camera* hearing are required to be sealed. *People v. Mooc* (2006) 26 Cal.4<sup>th</sup> 1216, 1229. Even where a *Pitchess* motion is ultimately granted, the Respondent Court could, and should in most cases, issue a protective order that would still shield the information from public disclosure. *Evid. Code* §1045(e); *Alford, supra*, at 1053 (“*Evidence Code* section 1045, subdivision (e) requires issuance of an order preventing use of *Pitchess* material outside the “court proceeding” in which it was obtained.”) Thus, in seeking to publicly disclose the purported contents of confidential police personnel information in the opening brief of a *Pitchess* Motion, Plaintiff is attempting, quite figuratively, to jump the gun.

**VI. THE COURT SHOULD HAVE GRANTED THE MOTION FOR PROTECTIVE ORDER AND ORDERED BRIEFING ON THE PITCHESS MOTIONS FILED UNDER SEAL.**

**A. Pitchess Motions May Be Filed Under Seal To Protect Confidentiality**

The Respondent Court was authorized pursuant to *Evidence Code* §1045(d) to issue a protective order as to the *Pitchess* Motions as requested by Jette and Rosoff. [Ex. G.] *Evidence Code* §1045(d) is a “generalized statutory limitation” on the discovery of police personnel records that expressly authorizes a protective order to be issued in response to a motion by either the police department or by the officer himself whose records are being sought. *Fletcher v. Superior Court* (2002) 100 Cal.App.4<sup>th</sup> 386, 397. The protective order shall be issued as “justice requires to protect the officer or agency from unnecessary annoyance, embarrassment or oppression. *Evid. Code* §1045(d).

The courts have recognized that an appropriate remedy to prevent disclosure of confidential police personnel information is to issue an order

sealing the records. *Fagan v. Superior Court*, *supra*, at 619. The Court of Appeal's opinion in *Fagan* clearly stands for the proposition that a person cannot reveal confidential personnel information that he or she had access to because of his/her position unless and until a §1043 motion is granted allowing him/her to do so. Plaintiff's claim that this well-established principle does not apply so long as he reveals such information in the body of a *Pitchess* motion upon information and belief is legally insupportable and suggests an exception to the rule that simply does not exist.

Furthermore, the Court in *Garcia v. Superior Court* expressly held that "a trial court has inherent discretion to allow documents to be filed under seal in order to protect against revelation of privileged information." *Garcia v. Superior Court* (2007) 42 Cal.4<sup>th</sup> 63, 71-72 ("Nothing in the relevant statutes precludes [a *Pitchess* affidavit] to be filed under seal").

Plaintiff argued to the Respondent Court that there was no authority requiring that the *Pitchess* Motions be filed under seal, ignoring the clear authority in *Fagan*, *supra*, *Garcia*, *supra*, Penal Code §832.7, and Evidence Code §1045(d). Conversely, Plaintiff has produced no legal authority to support the assertions that a protective order cannot be granted to protect confidentiality of §832.7 information by filing the motions under seal.

**B. Plaintiff's Motions Would Reveal Extensive Purported Confidential Information**

The Respondent Court erred in 'balancing' privacy rights guaranteed by law, and it clearly had the authority to issue a protective order to seal the *Pitchess* Motions and protect the officers' privacy rights. If filed unsealed, Plaintiff's *Pitchess* Motions will reveal privileged and confidential information that should not fall into the public domain. [Ex. G, 86:5-8; Ex. L, 119:25-28, 120:7-11; Ex. N, 134:25-28, 135:6-10.] Indeed, Plaintiff makes specific contentions regarding information revealed in the investigations and personnel records, including who was involved in the investigation, what was said, and what transpired thereafter, none of which should become public knowledge.

[See, Ex. CC **lodged under seal**, at Notice 319:11-321:21, Points and Authorities 330:10-21, 333:3-13, 335:13-26, 338:23-24, 342:9-13, Brizzolara Declaration, 343:17-344:9, 344:20-345:24, 346:21-351:16; and Ex. DD **lodged under seal**, at Notice 359:11-361:9, 362:1-7, 21-24, Points and Authorities 366:11-372:8, 373:20-27, 376:5-8, 379:20-26, Brizzolara Decl., 381:10-387:16, 388:17-389:26, 390:16-394:14.]

Plaintiff's *Pitchess* Motions go far beyond what is expected or required in order to establish materiality and good cause for discovery of police personnel records, and reveal what purports to be extensive confidential information. The Respondent Court committed clear error in failing to issue a protective order requiring that Plaintiff's *Pitchess* Motions and all related documents be filed under seal.

## **VII. PLAINTIFF'S OTHER ARGUMENTS AGAINST SEALING THE MOTIONS ARE BASELESS.**

In addition to Plaintiff's baseless contentions regarding the applicability of Rule 2.550, Plaintiff has promulgated additional meritless arguments that, even if they had been adopted by the Respondent Court, would not justify its order.

### **A. Sealing These Motions Will Not Affect a Sea Change Requiring All *Pitchess* Motions To Be Sealed**

First, Plaintiff argued to the Respondent Court that requiring his motions to be sealed would lead to requiring all *Pitchess* motions to be sealed. Such is not the case because "a litigant in the vast majority of cases will be able to obtain *Pitchess* discovery without revealing privileged information. Thus, filing under seal will usually be unnecessary." *Garcia v. Superior Court, supra*, at 72 [emphasis added].

The *Pitchess* Motions at issue here are atypical. Most *Pitchess* motions come about when a criminal defendant alleges that an officer mistreated him in some way, and seeks to discover *if* the officer had been subject to complaints

or discipline for other similar incidents by having the Court review the officer's personnel file. Here, the former Captain seeks to formally access and use documents and information about alleged disciplinary processes in which Plaintiff alleges that he participated as a police department management team member. The unusual factual circumstances of this case require that the motions be filed under seal to protect the privileged personnel information at stake.

While Plaintiff may or may not have a legitimate need for the information (this issue will be decided on the motions), he is trying to take advantage of the process and annoy, embarrass, and oppress the Petitioners by revealing his account of the confidential details of this information in the *Pitchess* Motions themselves. *Penal Code* §832.7 prohibits this.

**B. There Is No Prejudice To Plaintiff In Having The *Pitchess* Motions Heard, But Filed Under Seal**

Neither the City nor the officers have ever sought to prohibit Plaintiff from making his *Pitchess* Motions. Rather, they simply sought to protect the officers' privacy rights by issuing a protective order that the *Pitchess* Motions and all related documents be filed under seal. Doing so will have absolutely no impact on the merits or substantive determination of the *Pitchess* Motions, and Plaintiff will accordingly suffer no prejudice. All that will be prevented is Plaintiff's misguided attempts to smear these officers' reputations in public.

**VIII. CONCLUSION**

The Respondent Court committed clear legal error in its December 15, 2010 order declining to issue a protective order to prevent public disclosure of purported confidential personnel information of third-party police officers Jette and Rosoff protected by *Penal Code* § 832.7. As such, this Court should grant this Petition overruling the Respondent's Court order, and commanding it to issue a new order granting the officers' motion and issuing a protective order requiring that the *Pitchess* Motions, and all supporting, opposition and



reply papers be filed under seal, or alternatively, to show cause why such relief should not be granted.

Dated: December 30 2010

Burke, Williams, & Sorensen, LLP

By: 

Robert J. Tyson

Attorneys for Petitioner City of Burbank

Dated: December 19 2010

Stone Busanah, LLP

By: 

Michael P. Stone

Attorneys for Petitioners Jay Jette and  
Eric Rosoff

**CERTIFICATE OF WORD COUNT**

The text of this petition and supporting memorandum consists of 9,976 words as counted by Microsoft Word Processing program used to generate the brief.

Dated: December 30, 2010

Burke, Williams, & Sorensen, LLP

By: 

Robert J. Tyson

Attorneys for Petitioner City of Burbank

**PROOF OF SERVICE PERSONAL DELIVERY**

I am employed in the County of Los Angeles, State of California and am over the age of 18 and not a party to the within action. My business address is 1511 W. Beverly Blvd., Los Angeles, CA 90026. On December 30, 2010, I personally served the following document described as:

**PETITION FOR WRIT OF MANDATE, WRIT OF  
PROHIBITION OR OTHER APPROPRIATE RELIEF;  
MEMORANDUM OF POINTS AND AUTHORITIES**

**REQUEST FOR IMMEDIATE STAY OF ORDER PERMITTING  
FILING OF UNSEALED PITCHES MOTIONS CONTAINING  
CONFIDENTIAL PEACE OFFICER PERSONNEL  
INFORMATION AS EARLY AS JANUARY 19, 2011**

by delivering copies thereof to:

Clerk, Court of Appeals  
Second Appellate District  
Ronald Reagan State Building  
300 So. Spring St. 2nd Floor  
Los Angeles, CA 90013

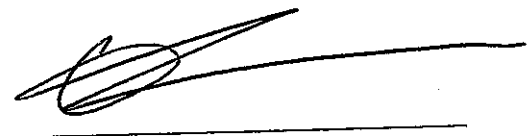
Original and 4 copies

The Hon. John Shepard Wiley, Jr.  
Los Angeles County Superior Court  
Department 50  
111 N. Hill Street  
Los Angeles, CA 90012

One Copy

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 30, 2010, at Los Angeles, California.

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

**PROOF OF SERVICE PERSONAL DELIVERY**

I am employed in the County of Los Angeles, State of California and am over the age of 18 and not a party to the within action. My business address is 1511 W. Beverly Blvd., Los Angeles, CA 90026. On December 30, 2010, I personally served the following document described as:

**PETITION FOR WRIT OF MANDATE, WRIT OF PROHIBITION OR OTHER APPROPRIATE RELIEF;  
MEMORANDUM OF POINTS AND AUTHORITIES**

**REQUEST FOR IMMEDIATE STAY OF ORDER PERMITTING  
FILING OF UNSEALED PITCHES MOTIONS CONTAINING  
CONFIDENTIAL PEACE OFFICER PERSONNEL  
INFORMATION AS EARLY AS JANUARY 19, 2011**

by delivering copies thereof to:

Gregory W. Smith, Esq.  
Law Offices of Gregory W. Smith  
9100 Wilshire Blvd., Suite 345E  
Beverly Hills, CA 90212  
Telephone: (310) 777-7894  
Facsimile: (310) 777-7895

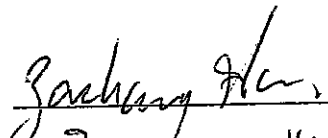
Attorneys for William Taylor  
*Real Party In Interest*

Christopher Brizzolara, Esq.  
1528 16th Street  
Santa Monica, CA 90404  
Telephone: (310) 394-6447  
Facsimile: (310) 656-7701

Attorneys for William Taylor  
*Real Party In Interest*

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 30, 2010, at Los Angeles, California.

  
ZACHARY HARRIS

**PROOF OF SERVICE PERSONAL DELIVERY**

I am employed in the County of Los Angeles, State of California and am over the age of 18 and not a party to the within action. My business address is 1511 W. Beverly Blvd., Los Angeles, CA 90026. On December 30, 2010, I personally served the following document described as:

**PETITION FOR WRIT OF MANDATE, WRIT OF PROHIBITION OR OTHER APPROPRIATE RELIEF;  
MEMORANDUM OF POINTS AND AUTHORITIES**

**REQUEST FOR IMMEDIATE STAY OF ORDER PERMITTING  
FILING OF UNSEALED PITCHES MOTIONS CONTAINING  
CONFIDENTIAL PEACE OFFICER PERSONNEL  
INFORMATION AS EARLY AS JANUARY 19, 2011**

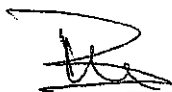
by delivering copies thereof to:

Michael P. Stone, SBN 91142  
Stone Busailah, LLP  
200 E. Del Mar Boulevard, Suite 350  
Pasadena, California 91105  
Telephone: 626-683-5600  
Facsimile: 626 683-5656

Attorneys for Jay Jette and  
Eric Rosoff

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 30, 2010, at Los Angeles, California.

  
\_\_\_\_\_  
BETTY KATONPO



Not Reported in Cal.Rptr.3d, 2011 WL 1950015 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)  
 (Cite as: 2011 WL 1950015 (Cal.App. 2 Dist.))

Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Second District, Division 3, California.

CITY OF BURBANK, et al., Petitioners,

v.

The SUPERIOR COURT of Los Angeles County,  
 Respondent;

William Taylor, Real Party in Interest.

No. B229849.

(Los Angeles County Super. Ct. No. BC422252).  
 May 23, 2011.

ORIGINAL PROCEEDINGS in mandate. John Shepard Wiley Jr., Judge. Petition granted. Burke Williams & Sorensen, Ronald F. Frank, Robert J. Tyson, Michele L. Graeler; and Kristin A. Pelletier for Petitioner City of Burbank.

Stone Busailah and Michael P. Stone for Petitioners Jay Jette and Eric Rosoff.

No appearance for Respondent.

Law Offices of Gregory W. Smith, Gregory W. Smith; Benedon & Serlin, Douglas G. Benedon, Gerald M. Serlin; and Christopher Brizzolara for Real Party in Interest.

ALDRICH, J.

#### INTRODUCTION

\*1 Real party in interest William Taylor sued his former employer, petitioner City of Burbank, for retaliation, based on allegations he was demoted and eventually fired from the police department for reporting sexual harassment and racial discrimination. To support his cause, Taylor served various

discovery motions under Evidence Code sections 1043 and 1045 seeking personnel records of Burbank Police Officers Jay Jette and Eric Rosoff. Claiming that the motions circumvented the statutory scheme regarding disclosure of those records by revealing their contents, Burbank and the officers asked the trial court to seal Taylor's motions. The trial court refused. We hold that the motions should be sealed, and we therefore grant the petition.

#### BACKGROUND

##### I. Taylor sues the City of Burbank for retaliation.

Real party in interest Taylor was Burbank Police Department's deputy chief of police. In September 2009, he sued the City of Burbank for retaliation under Labor Code section 1102.5 and for retaliation in violation of California's Fair Employment and Housing Act. The complaint alleged that Taylor reported allegations of sexual harassment by a police department employee; he complained that Black and Hispanic employees were being fired because of their race; and he had asked outside agencies to investigate a theft at the police department that Taylor suspected someone in the department committed. For these actions, Taylor was demoted to captain. Taylor was ultimately fired in June 2010, and he therefore amended his complaint in January 2011.

##### II. Taylor requests the personnel records of Officers Jette and Rosoff.

In August 2010, Taylor served two discovery motions seeking personnel records of Burbank Police Officers Jette and Rosoff, but Taylor agreed not to file the motions until the officers and Burbank could file a request to file the motions under seal. The officers filed the motion for protective order, and Taylor's discovery motions were lodged under seal.

##### III. The trial court denies the motion for a protective order to seal Taylor's discovery motions.

Not Reported in Cal.Rptr.3d, 2011 WL 1950015 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)  
 (Cite as: 2011 WL 1950015 (Cal.App. 2 Dist.))

On December 15, 2010, the trial court denied the motion for a protective order and held that Taylor could file the motions unsealed. The court stated three reasons for denying the motion to seal the discovery motions: first, the "highly important principle of American jurisprudence of public access to courts"; second, Taylor's "account of the world is certain to be aired at trial"; and, third, the court did not find an "overriding or strong public interest in placing material under seal that, by my analysis, inevitably would come out at trial. It would come out in the form of witness testimony subject to cross-examination."

This petition followed. We issued a stay of the trial court's order and issued an order to show cause. We now grant the petition and issue a writ.

#### DISCUSSION

##### IV. Taylor's discovery motions should be filed under seal.

\*2 Burbank and Officers Jette and Rosoff argue that Taylor's discovery motions subvert the statutory process by which peace officers' personnel records may be obtained by revealing, in the motions themselves, the very information they seek. Burbank and the officers therefore contend that Taylor's discovery motions are "confidential" and should have been sealed pending a ruling on the discoverability of the actual records.

In any case, civil or criminal, in which discovery or disclosure of a peace officer's personnel records are sought, the party seeking disclosure must file a written motion, known in the criminal context as a *Pitchess*<sup>FN1</sup> motion, that, among other things, describes the information sought and states good cause for the discovery, "setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that the governmental agency identified has the records or information from the records." (Evid.Code, § 1043, subd. (b)(3); see generally, Evid.Code, §§ 1043, 1045; Pen.Code, §§ 832.5, 832.7, 832.8; *People v. Mooc* (2001) 26 Cal.4th 1216, 1226.) The affidavit setting forth good cause

"may be on information and belief and need not be based on personal knowledge [citation], but the information sought must be requested with sufficient specificity to preclude the possibility of a defendant's simply casting about for any helpful information [citation]." (*Mooc*, at p. 1226.) If the moving party fulfills these requirements, then the court examines the records in camera. (*Ibid.*) This process balances the conflicting interests of the moving party's right to a fair trial and the officer's interest in privacy. (*Id.* at p. 1227.) An officer thus has a conditional privilege in his or her personnel records. (*Fagan v. Superior Court* (2003) 111 Cal.App.4th 607, 614.)

FN1. *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

This conditional privilege has been broadly interpreted. In *Hackett v. Superior Court* (1993) 13 Cal.App.4th 96, 98, the plaintiff in a suit for damages against Hackett served interrogatories asking for Hackett's home address, telephone number, place of birth, driver's license number, and educational background. *Hackett* found that the conditional privilege applies to *all* information in an officer's file "without regard to whether a particular piece of information can also be found elsewhere." (*Id.* at p. 97; see *City of San Diego v. Superior Court* (1981) 136 Cal.App.3d 236 [trial court granted partial disclosure of one incident in officers' records; plaintiff could not ask the officers in deposition about other undisclosed incidents]; *Fagan v. Superior Court*, *supra*, 111 Cal.App.4th at p. 615 [district attorney who reviewed confidential peace officer personnel files when investigating police misconduct was obligated to maintain their confidentiality absent judicial review under Evidence Code section 1043 of the relevance of the information to a criminal or civil action].)

\*3 Thus, under the statutory scheme and *Hackett*, even if conditionally privileged information can be gleaned from another source, it nonetheless remains conditionally privileged and can only be obtained by and disclosed after compliance with Evid-



Not Reported in Cal.Rptr.3d, 2011 WL 1950015 (Cal.App. 2 Dist.)  
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)  
 (Cite as: 2011 WL 1950015 (Cal.App. 2 Dist.))

ence Code section 1043 et seq. If information is conditionally privileged, it follows that a party cannot reveal it absent filing the appropriate discovery motion and after an in-camera hearing. A party therefore cannot disclose the conditionally privileged information, even in the very discovery motion that seeks to obtain it.

But here Taylor filed very detailed discovery motions seeking Officers Jette's and Rosoff's personnel files. Those motions contain, for example, names, dates, and the substance of communications between people in the department. Taylor was Burbank's deputy chief of police. As such, he was involved in internal affairs investigations and events that are the subject of the lawsuit, including an investigation into a burglary at the Burbank police department allegedly involving Officer Rosoff. Based on Taylor's rank and intimate involvement in these events, it is a reasonable inference he has knowledge of the officers' personnel files. It is a further reasonable inference that the information or allegations about the officers that Taylor recites in his discovery motion are in the officers' personnel files.

It is therefore proper for the discovery motions to be sealed. A trial court has the inherent discretion to seal an affidavit filed in support of a motion filed under Evidence Code section 1043 et seq. (*Garcia v. Superior Court* (2007) 42 Cal.4th 63.) In *Garcia*, the defendant filed a *Pitchess* motion accompanied by defense counsel's sealed declaration, which contained attorney-client and work product privileged information. (*Id.* at p. 68.) A redacted declaration was served on the City. The trial court found that some of declaration was privileged, but that other portions could be given to the City under the safeguard of a protective order. The California Supreme Court found that nothing in the relevant statutes precludes filing a *Pitchess* affidavit under seal, rather, a trial court has "inherent discretion to allow documents to be filed under seal in order to protect against revelation of privileged information." <sup>FN2</sup> (*Garcia*, at pp. 71-72; see also

Evid.Code, § 1045, subd. (d) ["Upon motion seasonably made by the governmental agency which has custody or control of the records to be examined or by the officer whose records are sought, and upon good cause showing the necessity thereof, the court may make any order which justice requires to protect the officer or agency from unnecessary annoyance, embarrassment or oppression"].) *Garcia* thus arguably articulated a broad principle that applies here: a trial court has the discretion to seal matters containing privileged matter in connection with discovery motions filed under Evidence Code sections 1043 and 1045.

FN2. The parties dispute what is the proper standard of review, with Taylor arguing it is an abuse of discretion and Burbank and the officers arguing it is de novo. We need not decide which standard of review applies, because the outcome would be no different under either standard.

\*4 The trial court, however, in declining to seal the discovery motions noted that the information in the motions will likely come out at trial. That may very well be true. In any event, the statutory process cannot be bypassed. The court also cited the notion that court proceedings are generally open to the public. Our Legislature, however, in enacting the discovery statutes at issue, created a "conditional exception" to that general rule: peace officer personnel files are discoverable *if* the party seeking them satisfies the statutory mandates. Taylor cannot reveal conditionally privileged information under the guise of seeking it, without first complying with the statutory mandates.

We conclude that the trial court should have granted Burbank's and the officers' request to seal Taylor's discovery motions. We therefore grant the petition and issue a writ ordering the trial court to file Taylor's discovery motions under seal.

#### DISPOSITION

The petition for writ of mandate, prohibition or other appropriate relief is granted. A writ of man-

Not Reported in Cal.Rptr.3d, 2011 WL 1950015 (Cal.App. 2 Dist.)  
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)  
(Cite as: 2011 WL 1950015 (Cal.App. 2 Dist.))

date shall issue directing the trial court to vacate its order denying the motion to seal Taylor's discovery motion and to enter a new order granting the motion to seal. The stay issued on January 19, 2011 is lifted and the motions, while filed under seal, may be placed on calendar. The parties are to bear their own costs on appeal.

We concur: KLEIN, P.J., and CROSKEY, J.

Cal.App. 2 Dist., 2011.  
City of Burbank v. Superior Court  
Not Reported in Cal.Rptr.3d, 2011 WL 1950015  
(Cal.App. 2 Dist.)

END OF DOCUMENT



DENNIS A. BARLOW, CITY ATTORNEY  
(SBN 63849)  
CAROL A. HUMISTON, SR. ASST. CITY ATTY.  
(SBN 115592)  
275 East Olive Avenue  
P. O. Box 6459  
Burbank, CA 91510  
Tel: (818) 238-5707 Fax: (818) 238-5724

CONFORMED COPY  
ORIGINAL FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

JAN 05 2011

RONALD F. FRANK (SBN 109076)  
E-mail: rfrank@bwslaw.com  
ROBERT J. TYSON (SBN 187311)  
E-mail: rtyson@bwslaw.com  
BURKE, WILLIAMS & SORESENSEN, LLP  
444 S. Flower Street, 24<sup>th</sup> Floor  
Los Angeles, CA 90071  
Tel: 213-236-0600 Fax: 213-236-2700

John A. Clarke, Executive Officer/Clerk  
BY  Deputy  
Gloria Robinson

Attorneys for Defendant  
City of Burbank

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

v.

CITY OF BURBANK and DOES 1  
through 100, inclusive,,

Defendants.

Case No. BC 422252

**DEFENDANT CITY OF BURBANK'S  
OPPOSITION TO PLAINTIFF'S MOTION  
FOR DISCOVERY OF PEACE OFFICER  
PERSONNEL AND OTHER RECORDS  
REGARDING THE INVESTIGATION OF  
THE BURBANK POLICE DEPARTMENT  
CONDUCTED BY MERRICK BOBB;  
DECLARATIONS OF ROBERT J. TYSON,  
DENNIS BARLOW AND DEBRA WONG  
YANG**

Date: January 19, 2010  
Time: 8:30 a.m.  
Dept.: 50

Trial: September 20, 2011

Defendant City of Burbank respectfully submits its Opposition to Plaintiff's mis-named motion seeking discovery of attorney-client privileged materials, not peace office personnel records. Plaintiff's motion employs an improper procedure, lacks merit, and should be denied.

LA #4843-8793-7544 v2

1     **I. INTRODUCTION**

2           This Motion is an ill-conceived effort to violate the rights of the defendant City of  
3     Burbank ("City") to preserve the confidentiality of its attorney-client communications—one of  
4     the fundamental rights to our legal system. Under the guise of a purported Motion for Discovery  
5     of Peace Officer Personnel and Other Records pursuant to *Evidence Code* §§ 1043 and 1045 (the  
6     "Motion") by which a party can move for access to qualifiedly privileged police officer personnel  
7     records after an assessment of good cause and potentially an *in camera* review by the Court with  
8     a court reporter, the custodian of those records, and the custodian's representative, plaintiff  
9     improperly seeks access to the absolutely privileged legal advice of two attorneys hired by the  
10    City, Merrick Bobb and Debra Wong Yang.

11           This Motion is a rather transparent attempt to confuse this Court and utilize a specially  
12    tailored procedure to take a short cut to documentary discovery, a procedure that plainly does not  
13    apply to the records being sought by this Motion. The Court should not be so easily fooled.  
14    Moreover, the Motion is simply an unwarranted fishing expedition as plaintiff's counsel has  
15    already admitted to this Court that the requested records "don't really have anything to with our  
16    case." [Declaration of Robert J. Tyson ("Tyson Decl."), ¶ 2, Ex. A, p. 9: 3-6.]

17           The Court should deny the Motion as matter of law for all of the following reasons:

18           First, the records sought are subject to the absolute protection of the attorney-client  
19    privilege and cannot be ordered produced even for *in camera* review by the Court;

20           Second, the records sought are not police officer personnel records and are not subject to  
21    *Evidence Code* §§ 1043 and 1045, the only basis on which the Motion was brought;

22           Third, plaintiff's counsel has admitted to this Court that the requested information is  
23    irrelevant to this case; and

24           Fourth, plaintiff has not even requested this information in discovery, let alone brought a  
25    proper motion to compel under the Discovery Act.

26           For all these reasons, and based upon this supporting brief and its accompanying  
27    declarations establishing the prima facie privileged nature of the requested attorney-client  
28    communications, the Plaintiff's Motion should be denied.

LA #4843-8793-7544 v2

- 2 -

1     **II.     STATEMENT OF FACTS**

2             Merrick Bobb and Debra Wong Yang are attorneys who were hired in December 2009 to  
3     provide legal advice to the City, and in particular the City Council. [Declaration of Dennis  
4     Barlow ("Barlow Decl."), ¶ 2; Declaration of Debra Wong Yang ("Yang Decl."), ¶ 2.] Ms. Yang  
5     and Mr. Bobb provided such advice to the City Attorney's Office and to the City Council in  
6     closed session. Their communications, including their advice, were privileged attorney-client  
7     communications. [Barlow Decl., ¶ 2; Yang Decl., ¶ 2.]

8             Mr. Bobb and Ms. Yang did not conduct personnel investigations of plaintiff or any other  
9     particular officer in the City's police department, nor did they provide input into the discipline to  
10    be imposed upon Taylor or any other particular officer. [Barlow Decl., ¶ 3; Yang Decl., ¶ 3.] No  
11    documents provided by these attorneys are kept in any officer's personnel file or would otherwise  
12    qualify as a police personnel record. [Barlow Decl., ¶ 3.]

13            While plaintiff's Motion disingenuously refers to Mr. Bobb and Ms. Yang as  
14    "investigators", the fact is that they were lawyers hired for legal advice rather than lay  
15    investigators hired to conduct a personnel investigation. [Barlow Decl., ¶ ¶2, 3; Yang Decl., ¶ 3.]  
16    Plaintiff's counsel were aware that they were attorneys, and had previously advised this Court  
17    that their work was not relevant to this action as follows:

18            "MR. SMITH:           They don't really have anything to do with our case your  
19            Honor, either Merrick Bobb or Yang. That is dealing with a force issue that has  
20            nothing to do with this."

21            [Tyson Decl., ¶ 2, Ex. A, p. 9: 3-6.]

22            Plaintiff has not served any written discovery seeking information related to the work of  
23    Merrick Bobb or Debra Wong Yang for the City. [Tyson Decl., ¶ 3.] As such, the City has not  
24    yet had the opportunity to consider the phrasing and scope of such request, object to all or part of  
25    it based on attorney-client privilege and any other applicable grounds, and meet and confer. [Id.]  
26    In other words, plaintiff has not and could not have brought this as a motion to compel under the  
27    Discovery Act. Thus, as a discovery motion the Motion is premature and as a *Pitchess* motion it  
28    is fatally defective.

LA #4843-8793-7544 v2



1 hired to provide advice to the City Attorney's Office and City Council, and did so. [Id.] Plaintiff  
2 disingenuously tries to avoid the issue of privilege by labeling Mr. Bobb and Ms. Yang as  
3 "investigators." However, both the attorney (Ms. Yang) and the client (Mr. Barlow) have  
4 submitted declarations in support of this opposition establishing the elements of the existence of a  
5 privileged attorney-client relationship, communication in confidence, and the legal advice  
6 character of the communications being sought by the Motion. As the privilege is absolute, the  
7 Motion seeking discovery of the attorney-client communications and legal opinions of Mr. Bobb  
8 and Ms. Yang must be denied as a matter of law.

9  
10 **IV. PLAINTIFF CANNOT USE THE *PITCHESS* PROCESS TO SEEK DISCOVERY**  
11 **OF ATTORNEY-CLIENT PRIVILEGED DOCUMENTS**

12 The disclosure of peace officer personnel records is governed by rules *different* from those  
13 for discovery of other information because, although "evidence contained in a law enforcement  
14 officer's personnel file may be relevant in a lawsuit, [that] officer 'has a strong privacy interest in  
15 his or her personnel records and ... such records should not be disclosed unnecessarily.' " ( *Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1085; see *People v. Mooc* (2001) 26  
16 Cal.4th 1216, 1227. To balance these competing interests, following the Supreme Court's  
17 decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, the Legislature enacted a statutory  
18 scheme mandating certain procedures for discovery of peace officer personnel records. See *City*  
19 *of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 93-94, ("the Legislature clearly intended  
20 to place specific limitations and procedural safeguards on the disclosure of peace officer  
21 personnel files which had not previously been found in judicial decisions"); *Penal Code* §§ 832.7-  
22 832.8, *Evid. Code* §§ 1043-1045. In short, "the statutory *Pitchess* scheme applies *only* to peace  
23 and custodial officer [personnel] records" *People v. Gutierrez* (2003) 112 Cal.App.4th 1463,  
24 1474, fn. 6 (emphasis added).

25  
26 In this Motion, plaintiff seeks discovery of documents which are *not* police personnel  
27 records. [Yang Decl., ¶ 3, Barlow Decl., ¶ 3.] As such, the *Pitchess* statutory scheme simply



1 does not apply.<sup>1</sup> Therefore, plaintiff's Motion, noticed as based entirely on *Evidence Code* §§  
2 1043 and 1045, must be denied as a matter of law.

3  
4 **V. PLAINTIFF HAS ADMITTED TO THIS COURT THAT THE REQUESTED**  
5 **INFORMATION IS IRRELEVANT TO THIS CASE**

6 Even if the Court were to consider the relevance of the requested information, which it  
7 cannot do on the pending Motion, plaintiff's counsel has admitted to this Court that the work of  
8 Mr. Bobb and Ms. Yang is irrelevant and has "nothing to do with" Mr. Taylor's allegations of  
9 wrongful reassignment of his duties as a then-Captain on the Burbank Police Department and  
10 later discharge in light of the findings made by a non-lawyer and true outside investigator, James  
11 Gardiner:

12 "MR. SMITH: They don't really have anything to do with our case your  
13 Honor, either Merrick Bobb or Yang. That is dealing with a force issue that has  
14 nothing to do with this."

15 [Tyson Decl., ¶ 2, Ex. A, p. 9: 3-6.] Whether under *Pitchess* or properly under a Discovery Act  
16 motion following any future attempt to seek discovery of this information, plaintiff will have to  
17 make a showing of the relevance or "materiality thereof to the subject matter involved to the  
18 pending litigation." *Evid. Code* § 1043(b)(3); see e.g. C.C.P. 2031.310(b)(1) (good cause  
19 justifying the discovery). In *Pitchess* motions (the only type of motion currently before the  
20 Court), numerous cases have interpreted the good cause requirement, including *City of San Jose*  
21 *v. Superior Court*, *supra*, 67 Cal.App.4th at 1147, which held that the party seeking such records  
22 must provide a "specific factual scenario" establishing a "plausible factual foundation" justifying  
23 production of the records. In light of plaintiff's counsel's stark admission of lack of relevance of  
24 these records, plaintiff simply cannot make this showing here. Moreover, the California  
25 Supreme Court has expressly prohibited "fishing expeditions" in this regard. *City of Santa Cruz*,

26 <sup>1</sup> Although not directly on point, in *Garcia v. Superior Court* (2007) 42 Cal.4th 63, 77, the California Supreme Court  
27 held that the attorney-client privilege must be protected when privileged information is used to support a *Pitchess*  
28 motion, such that privileged information must be redacted from the supporting affidavit served on all parties and the  
police officers' agency. As such, it should be clear that the *Pitchess* process is not a means to unlock attorney-client  
privileged information.  
LA #4843-8793-7544 v2

1 *supra*, 49 Cal.3d at 85 (quoting *Pitchess v. Superior Court* (1975) 11 Cal.3d 531, 538), which is  
2 all that plaintiff's requests could be in this Motion in light of his counsel's admission.

3 Accordingly, plaintiff's Motion must be denied.

4  
5 **VI. PLAINTIFF HAS NOT MOVED AND CANNOT CURRENTLY MOVE TO**  
6 **COMPEL UNDER THE DISCOVERY ACT**

7 Plaintiff has not requested this information in discovery. [Tyson Decl., ¶ 3.] Thus, this  
8 Motion is not a motion to compel under the Discovery Act, and could not be brought as such. *See*  
9 *e.g. C.C.P. § 2031.310*, subsection (a) ("receipt of a response" to move to compel) and subsection  
10 (b)(2) (requiring meet and confer).

11 If plaintiff seeks discovery of communications, he is welcome to serve discovery requests  
12 under the Discovery Act. The City reserves the right to object thereto on privilege, relevancy,  
13 and any other appropriate grounds. Only then in the context of (a) a specific discovery request,  
14 (b) the City's specific objections, (c) the required pre-motion meet and confer process, and if  
15 necessary, (d) a motion to compel, would the Court have jurisdiction to act on such a request  
16 following a proper Discovery Act procedure. Nevertheless, even then, the absolute protection of  
17 the privilege would require denial of this hypothetical future motion to compel.

18  
19 **VI. CONCLUSION**

20 Plaintiff seeks to improperly use a *Pitchess* Motion to gain access to attorney-client  
21 privileged communications of the City and some of its attorneys. This Motion must be denied as  
22 a matter of law.

23 Dated: January 5, 2011

Burke, Williams & Sorensen, LLP

24  
25 By 

Robert J. Tyson

Attorneys for Defendant City of Burbank

**DECLARATION OF ROBERT J. TYSON**

I, Robert J. Tyson, hereby declare as follows:

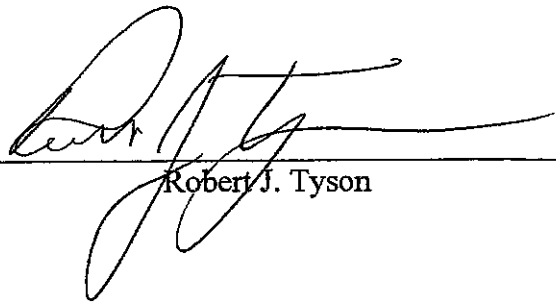
1. I am an attorney licensed to appear before this Court and a partner in the law firm of Burke, Williams & Sorensen, LLP, counsel of record in this action for defendant City of Burbank ("City"). As such, unless otherwise stated, the following statements are true of my own personal knowledge, and if called to testify, I could and would testify competently thereto.

2. Attached as Exhibit A is a true and correct copy of an excerpt of the reporter's transcript of a hearing held in this case on July 12, 2010. In the excerpt, plaintiff's counsel Gregory Smith informs this Court that the work of Merrick Bobb and Debra Wong Yang "has nothing to do with this [case]."

3. Plaintiff has not served any written discovery seeking information related to the work of Merrick Bobb or Debra Wong Yang for the City. As such, the City has not yet had the opportunity to consider the phrasing and scope of such request, object to all or part of it based on attorney-client privilege and any other applicable grounds, and meet and confer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5<sup>th</sup> day of January, 2010, at Los Angeles, California.

  
\_\_\_\_\_  
Robert J. Tyson

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF DENNIS A. BARLOW**

I, Dennis A. Barlow, hereby declare as follows:

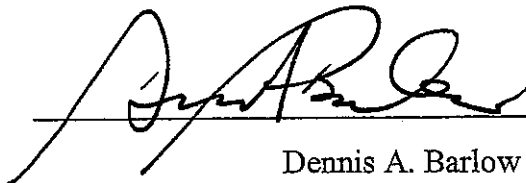
1. I am an attorney licensed to appear before this Court and the City Attorney for the City of Burbank. I have held this position since January 1997. As such, unless otherwise stated, the following statements are true of my own personal knowledge, and if called to testify, I could and would testify competently thereto.

2. In or about December, 2009, the City, through my office, hired attorneys Merrick Bobb and Debra Wong Yang to provide legal advice to the City. Mr. Bobb and Ms. Yang worked jointly. Their legal advice was provided only to me and my office and to the City Council in closed session. Their work on behalf of, and communications to and from, the City are subject to the attorney-client privilege, which the City asserts.

3. Mr. Bobb and Ms. Yang were not hired to investigate potential misconduct charges brought against plaintiff William Taylor, or against any other officer in the Burbank Police Department. Mr. Bobb and Ms. Yang did not provide any input into the investigation of potential misconduct charges or the discipline brought against plaintiff William Taylor as a result thereof, or into the investigation or discipline of any other officer in the Burbank Police Department. No documents provided by Mr. Bobb or Ms. Yang were placed in the personnel files of police officers in the Burbank Police Department, and no such documents provided by Mr. Bobb or Ms. Yang would otherwise qualify as personnel records of police officers in the Burbank Police Department.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 17 day of January, 2011, at Burbank, California.

  
Dennis A. Barlow

LA #4847-0532-9672 v1

**DECLARATION OF DEBRA WONG YANG**

I, Debra Wong Yang, hereby declare as follows:

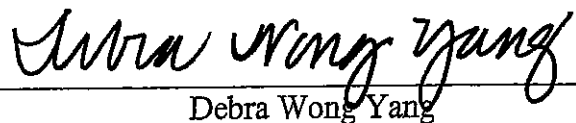
1. I am an attorney licensed to practice law in California, and a partner with the law firm of Gibson, Dunn & Crutcher, LLP. I have previously served as a judge for the Los Angeles Municipal Court starting in 1997 and of the Los Angeles Superior Court starting in 2000. In 2002, I was appointed United States Attorney for the Central District of California, a position in which I served from 2002 until 2006 when I joined my current firm. Unless otherwise stated, the following statements are of my own personal knowledge, and if called to testify, I could and would testify competently thereto.

2. On or about December 7, 2009, the City of Burbank, Office of the City Attorney, hired me to provide it with legal advice. They also retained attorney Merrick Bobb to assist in this matter. Mr. Bobb and I worked jointly on this project. Mr. Bobb and I provided legal advice to the City Attorney's office and to the City Council in closed session. Our communications to and from the City and our legal advice was intended to be maintained as confidential and was subject to the attorney-client privilege.

3. Mr. Bobb and I were not retained to, and I did not investigate potential misconduct charges brought against plaintiff William Taylor, or against any other officer in the Burbank Police Department. Mr. Bobb and I were not retained to, and I did not provide any input into the investigation of potential misconduct charges or into the discipline brought against plaintiff William Taylor as a result thereof.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 3rd day of January, 2011, at Los Angeles, California.

  
Debra Wong Yang

LA #4829-5420-7752 v1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 50

HON. JOHN SHEPARD WILEY, JR., JUDGE

WILLIAM TAYLOR,

PLAINTIFF,

V.

CITY OF BURBANK, ET AL.,

DEFENDANTS.

ORIGINAL

BC 422252

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, JULY 12, 2010

APPEARANCES:

FOR PLAINTIFF  
WILLIAM TAYLOR:

LAW OFFICES OF GREGORY W. SMITH  
BY: GREGORY W. SMITH  
6300 Canoga Avenue, Suite 1590  
Woodland Hills, CA 91367  
(818) 712-4000

FOR PLAINTIFF  
WILLIAM TAYLOR:

CHRISTOPHER BRIZZOLARA, ESQUIRE  
1528 16th Street  
Santa Monica, CA 90404  
(310) 394-6447

(Appearances continued on next page.)

LINDA NISHIMOTO, CSR 9147  
OFFICIAL REPORTER

1 APPEARANCES (Continuing):

2

3

4 FOR DEFENDANT  
5 CITY OF BURBANK:

BURKE, WILLIAMS & SORESENSEN, LLP  
BY: KRISTIN A. PELLETIER  
444 South Flower St., 24th Floor  
Los Angeles, CA 90071  
(213) 236-0600

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 CASE NUMBER: BC 422252  
2 CASE NAME: WILLIAM TAYLOR  
3 VERSUS  
4 CITY OF BURBANK, ET AL.  
5 LOS ANGELES, CALIFORNIA MONDAY, JULY 12, 2010  
6 DEPARTMENT 50 HON. JOHN SHEPARD WILEY, JR., JUDGE  
7 APPEARANCES: (AS HERETOFORE NOTED.)  
8 REPORTER: LINDA NISHIMOTO, CSR NO. 9147  
9 TIME: 9:14 A.M.

10 \*\*\*\*\*

11 (In open court:)

12 THE COURT: We are on the record in the Taylor  
13 matter. It looks to me like there was a very short  
14 negotiation. Are the motions still on?

15 MR. SMITH: Yes, your Honor.

16 MR. BRIZZOLARA: Yes.

17 THE COURT: All right, then, let's have appearances  
18 on these motions.

19 MR. SMITH: Gregory Smith on behalf of plaintiff  
20 William Taylor.

21 MR. BRIZZOLARA: Chris Brizzolara. I am here also  
22 on behalf of plaintiff William Taylor.

23 MS. PELLETIER: Kristin Pelletier, Burke, Williams  
24 & Sorensen, on behalf of defendant, City of Burbank.

25 THE COURT: Counsel, good morning and welcome to  
26 Department 50. Do have a seat and be comfortable please.

27 Each side has filed a discovery motion of  
28 some sort against the other side. I believe both of the



1 Counsel, are you involved in this case?

2 MR. TAYLOR: No, your Honor. I am Bill Taylor.

3 THE COURT: You are not counsel?

4 MR. BRIZZOLARA: He is the plaintiff.

5 THE COURT: If you would like to come forward and  
6 sit at counsel table, you are perfectly welcome to do so.

7 Anyone else here with an interest in the  
8 matter?

9 I am very sorry I mistook you for an  
10 attorney.

11 MR. TAYLOR: That's all right.

12 THE COURT: I know those are fighting words.

13 You don't have a client here?

14 MS. PELLETIER: There is a paralegal and intern who  
15 is here for educational purposes and who is here observing.

16 THE COURT: I would welcome that person making  
17 their appearance.

18 Good morning. If you would, please.

19 MS. KURIHARA: Good morning. I am Lisa Kurihara.

20 THE COURT: Have you previously made an appearance  
21 in court?

22 MS. KURIHARA: Yes, at the Burbank courthouse.

23 THE COURT: Welcome to this courthouse and this  
24 courtroom. It's a pleasure to have you and everybody here  
25 this morning. I don't usually get to meet all the people  
26 involved in a lawsuit. It's usually just the attorneys on  
27 the particular motion at hand so it's a great honor and a  
28 pleasure to have you here.

1                   So as to the investigation privilege, that  
2 is now moot I guess because the investigation is over.  
3 Burbank has produced some information that says, "Well, we  
4 don't have to produce anything beyond the Taylor file  
5 itself," but that is not what the Pitchess motion called  
6 for.

7                   The Pitchess motion specifically identified  
8 really the entire investigation file on these two  
9 investigations and the theory makes perfect sense. It is  
10 that Burbank says that they are firing Taylor on account of  
11 something having to do with these two investigations and  
12 Taylor's lawyers say, "Well, that is just a pretext. There  
13 is absolutely nothing to that and if we have access to the  
14 files, we will relitigate or litigate" I guess in the first  
15 instance "how valid this investigation was and show it to a  
16 jury that it's simply a sham."

17                   Burbank says, "It's no sham at all. We had  
18 a lot of famous people here, including Merrick Bobb, who is  
19 well known in the city and who is known as not necessarily a  
20 pawn for the police."

21                   I will disclose that I know Deborah Wong  
22 Yang. She and I were Assistant U.S. Attorneys in the early  
23 '90s together. I haven't kept up with her at all. I am not  
24 recusing myself. I can certainly decide this case utterly  
25 on its merits.

26                   If counsel would like to inquire, I would be  
27 happy to answer any questions about that, but I am not  
28 recusing myself. I am making that disclosure.

1 Deborah Wong Yang and I were co-workers in  
2 the same office.

3 MR. SMITH: They don't really have anything to do  
4 with our case, your Honor, either Merrick Bobb or Yang.  
5 That is dealing with a force issue that has nothing to do  
6 with this.

7 THE COURT: Well, the name came up in the papers.  
8 There was another name of some person who was alleged by the  
9 Taylor papers to have been an attorney frequently employed  
10 to cover up allegations of wrongdoing. I never heard of  
11 that lawyer before.

12 But we have a fight over -- a typical fight,  
13 you know. Whistleblower case. It's very significant to the  
14 individuals involved, but for lawyers and for courts who  
15 hear whistleblower claims all of the time, it's just another  
16 whistleblower fight that has to be investigated and tried  
17 before a jury if it gets through the summary judgment that  
18 may well be impending although I have no idea. That would  
19 be par for the course, summary judgment motion of some sort  
20 in a case like this.

21 So I would grant the Pitchess motion in its  
22 entirety which is to say including those officers and the  
23 identified investigation since showing of good cause clearly  
24 has been met. The good cause being the need to defend  
25 against a stated reason for termination or for moving Taylor  
26 out of the -- is it the deputy chief position?

27 MR. SMITH: Yes.

28 THE COURT: And Burbank says, "That wasn't a

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 50

HON. JOHN SHEPARD WILEY, JR., JUDGE

WILLIAM TAYLOR,

PLAINTIFF,

V.

CITY OF BURBANK, ET AL.,

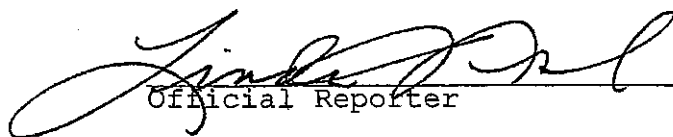
DEFENDANTS.

BC 422252

REPORTER'S  
CERTIFICATE

I, Linda Nishimoto, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 1 through 35, inclusive, comprise a complete, true and correct transcript of the proceedings held on Monday, July 12, 2010, in the matter of the above-entitled cause.

Dated this 20th day of July, 2010.

  
Official Reporter

C.S.R. 9147

**PROOF OF SERVICE BY OVERNIGHT DELIVERY**

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953. On January 5, 2011, I deposited with Federal Express, a true and correct copy of the within documents:

**DEFENDANT CITY OF BURBANK'S OPPOSITION TO PLAINTIFF'S MOTION FOR DISCOVERY OF PEACE OFFICER PERSONNEL AND OTHER RECORDS REGARDING THE INVESTIGATION OF THE BURBANK POLICE DEPARTMENT CONDUCTED BY MERRICK BOBB; DECLARATIONS OF ROBERT J. TYSON, DENNIS BARLOW AND DEBRA WONG YANG**

in a sealed envelope, addressed as follows:

Gregory W. Smith, Esq.  
Law Offices of Gregory W. Smith  
9100 Wilshire Blvd., Suite 345E  
Beverly Hills, CA 90212

Christopher Brizzolara, Esq.  
1528 16th Street  
Santa Monica, CA 90404  
Fax: (310) 656-7701

Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 5, 2011, at Los Angeles, California.

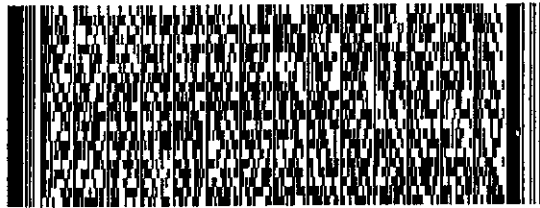
  
ALICE CHEUNG

From: Origin ID: EMTA (213) 236-0600  
 Alice Cheung  
 Burke, Williams & Sorensen  
 444 S. Flower Street, Suite 2400  
 Los Angeles, CA 90071



J16301010040225

SHIP TO: (000) 000-0000 BILL SENDER  
**Christopher Brizzolara, Esq.**  
 1528 16th Street  
 Santa Monica, CA 90404



Ship Date: 05JAN11  
 Act/Wgt: 1.0 LB  
 CAD: 4459513/INET3090

Delivery Address Bar Code



Ref # 06147-0015  
 Invoice #  
 PO #  
 Dept #

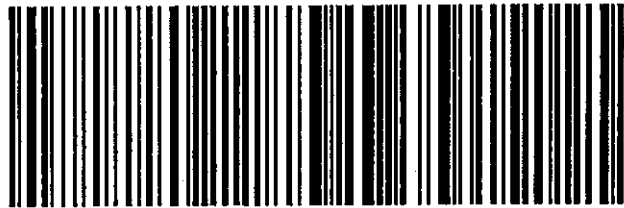
TRK# 7942 9170 7934  
 0201

THU - 06 JAN A1  
 STANDARD OVERNIGHT

90404

CA-US

LAX

**WZ SMOA**

50AG1/0E71/2780

**After printing this label:**

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

**Warning:** Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

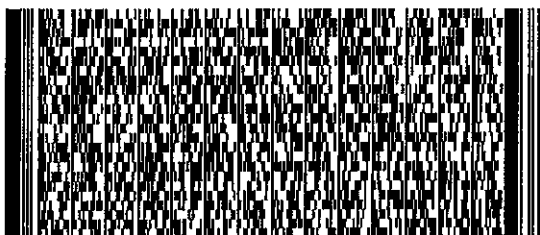
Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on [fedex.com](http://fedex.com). FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

From: Origin ID: EMTA (213) 236-0600  
 Alice Cheung  
 Burke, Williams & Sorensen  
 444 S. Flower Street, Suite 2400  
 Los Angeles, CA 90071



J18304018940225

SHIP TO: (000) 000-0000 **BILL SENDER**  
**Gregory Smith, Esq.**  
**Law Offices of Gregory W. Smith**  
**9100 Wilshire Boulevard**  
**Suite 345E**  
**Beverly Hills, CA 90212**



Ship Date: 05JAN11  
 Act/Wgt: 1.0 LB  
 CAD: 4459513/INET3090

Delivery Address Bar Code



Ref # 06147-0015  
 Invoice #  
 PO #  
 Dept #

TRK#  
 0201 7966 2675 5008

THU - 06 JAN A1  
 STANDARD OVERNIGHT

90212

CA-US

LAX

WZ CCDA



50AG1NET72780

**After printing this label:**

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

**Warning:** Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on [fedex.com](http://fedex.com). FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

**Cheung, Alice**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Thursday, January 06, 2011 11:22 AM  
**To:** Cheung, Alice  
**Subject:** FedEx Shipment 794291707934 Delivered

---

This tracking update has been requested by:

Company Name: Burke, Williams & Sorensen  
Name: Alice Cheung  
E-mail: acheung@bwsllaw.com

---

Our records indicate that the following shipment has been delivered:

Reference: 06147-0015  
Ship (P/U) date: Jan 5, 2011  
Delivery date: Jan 6, 2011 11:18 AM  
Sign for by: Signature not required  
Delivery location: MARINA DEL REY, CA  
Delivered to: Residence  
Service type: FedEx Standard Overnight  
Packaging type: FedEx Envelope  
Number of pieces: 1  
Weight: 0.50 lb.  
Special handling/Services: Residential Delivery  
Deliver Weekday

Tracking number: 794291707934

Shipper Information	Recipient Information
Alice Cheung	Christopher Brizzolara, Esq.
Burke, Williams & Sorensen	1528 16th Street
444 S. Flower Street, Suite 2400	Santa Monica
Los Angeles	CA
CA	US
US	90404
90071	

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 1:21 PM CST on 01/06/2011.

To learn more about FedEx Express, please visit our website at [fedex.com](http://fedex.com).

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above, or visit us at [fedex.com](http://fedex.com).

This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and fedex.com's terms of use, go to [fedex.com](http://fedex.com).

Thank you for your business.

1/6/2011



**Cheung, Alice**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Thursday, January 06, 2011 10:47 AM  
**To:** Cheung, Alice  
**Subject:** FedEx Shipment 796626755008 Delivered

---

This tracking update has been requested by:

Company Name: Burke, Williams & Sorensen  
Name: Alice Cheung  
E-mail: acheung@bwslaw.com

---

Our records indicate that the following shipment has been delivered:

Reference: 06147-0015  
Ship (P/U) date: Jan 5, 2011  
Delivery date: Jan 6, 2011 10:39 AM  
Sign for by: S.FRANCIA  
Delivery location: LOS ANGELES, CA  
Delivered to: Receptionist/Front Desk  
Service type: FedEx Standard Overnight  
Packaging type: FedEx Envelope  
Number of pieces: 1  
Weight: 0.50 lb.  
Special handling/Services: Deliver Weekday

Tracking number: 796626755008

**Shipper Information**

Alice Cheung  
Burke, Williams & Sorensen  
444 S. Flower Street, Suite 2400  
Los Angeles  
CA  
US  
90071

**Recipient Information**

Gregory Smith, Esq.  
Law Offices of Gregory W. Smith  
9100 Wilshire Boulevard  
Suite 345E  
Beverly Hills  
CA  
US  
90212

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 12:47 PM CST on 01/06/2011.

To learn more about FedEx Express, please visit our website at [fedex.com](http://fedex.com).

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above, or visit us at [fedex.com](http://fedex.com).

This tracking update has been sent to you by FedEx on the behalf of the Requestor noted above. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and fedex.com's terms of use, go to [fedex.com](http://fedex.com).

Thank you for your business.

1/6/2011

# First Legal Support Services

Los Angeles	(213) 250-1111	• Fax (213) 250-1197
Direct line to legal	(213) 250-9111	• Fax (213) 250-1197
Los Angeles (West)	(310) 277-9111	• Fax (310) 277-9153
Direct line to legal	(310) 277-7101	• Fax (310) 277-9153
Inland Empire	(951) 779-1110	• Fax (951) 779-0100
San Diego	(619) 231-9111	• Fax (619) 231-1361
San Francisco	(415) 626-3111	• Fax (415) 626-1331
Santa Ana	(714) 541-1110	• Fax (714) 541-8182
Sacramento	(916) 444-5111	• Fax (916) 443-3111
Las Vegas	(702) 671-4002	• Fax (702) 366-0768
Phoenix	(602) 248-9700	• Fax (602) 248-9727

<b>COURT FILING / COURT RESEARCH FORM</b>		web address: <a href="http://firstlegalsupport.com">firstlegalsupport.com</a>		CONTROL NO.	DATE: 1/5/11
<b>FIRM NAME:</b> BURKE WILLIAMS & SORENSEN, LLP 444 SOUTH FLOWER ST., STE. 2400 LOS ANGELES, CA. 90071  <b>PHONE:</b> 213.236.0600 <b>FAX:</b> 213.236.2700 <b>ATTY / SECRETARY:</b> Tyson/Alice <b>EXT:</b> 2713		<b>DESTINATION / COURT:</b>  LASC-DOWNTOWN  <b>DOCUMENTS</b>  CITY OF BURBANK'S OPPOSITION TO PLAINTIFF'S MOTION FOR DISCOVERY OF PEACE OFFICER PERSONNEL AND OTHER RECORDS, ETC.			
<b>CLIENT MATTER / ATTY. CODE</b> 06147-0015		<b>HEARING SET FOR:</b> _____ <b>AT</b> _____ <b>DEPT/DIV</b> _____ <input type="checkbox"/> <b>SELF ADDRESSED STAMPED ENVELOPE (S) ATTACHED</b> <b>FEE ATTACHED: \$</b>			
<b>CASE NO:</b> BC 422252					
<b>Short Title of Case:</b>  TAYLOR v. CITY OF BURBANK					
<b>PLEASE NOTE ANY SPECIFIC OR TIMELY FILING REQUIREMENTS</b>					
<b>COURT RESEARCH</b>	<b>ON DEMAND FILINGS</b>			<b>COURT RUN</b>	
<input type="checkbox"/> <b>ASAP RESEARCH</b> (Immediate) <input type="checkbox"/> <b>SAME DAY RESEARCH</b> (Allow full day to obtain) <input type="checkbox"/> <b>NEXT DAY RESEARCH</b> (Allow two days to obtain)	<input checked="" type="checkbox"/> <b>SPEC FILE</b> (Immediate) <input type="checkbox"/> <b>RUSH FILE</b> (Within 2 hours) <input type="checkbox"/> <b>ASAP FILE</b> (Within 1 hour) <input type="checkbox"/> <b>REG FILE</b> (Within 4 hours)			<input type="checkbox"/> <b>SAMEDAY</b> (Filings Only)* <input type="checkbox"/> <b>NEXTDAY</b> (Filings Only)* *Per Agreement	
<input type="checkbox"/> <b>FILE</b>  <input type="checkbox"/> <b>RESEARCH COPY REQUEST</b>	<input type="checkbox"/> <b>ISSUE</b>  <input type="checkbox"/> <b>CERTIFIED COPY</b>	<input type="checkbox"/> <b>SUBMIT</b>  <input type="checkbox"/> <b>FORM REQUEST</b>	<b>OTHER:</b>  Complete by:		
<b>SPECIAL INSTRUCTIONS:</b>  FILE AND CONFORM TODAY. PLEASE BRING COURTESY COPY TO DEPT. 50					

1

4820568 | 066

SPCFLBK |

066

1/ 1 RETURN

1/05/11

BC422252  
TAYLOR V. BURBANK  
OPPOSITION  
COURTESY CPY TO JDGE  
RTRN CONFORMS ON RUN

1/05/11

**\*\*ROUND TRIP\*\***

LASC-LOS ANGELES  
111 NORTH HILL STREET  
LOS ANGELES CA 90012  
213 974-5248 Ext:5428 Zns: 1/1  
8:30AM-4:30PM Rm:DEPTS 1-86

BC422252  
TAYLOR V. BURBANK  
OPPOSITION

1/05/11

667

**To: 15:59**

1/05/11	15:14	Yes	???
---------	-------	-----	-----

**Cheung, Alice**

---

**From:** Lozada, Frederico  
**Sent:** Wednesday, January 05, 2011 4:11 PM  
**To:** Cheung, Alice  
**Subject:** First Legal conf. for Ctr# 4820568

FIRST LEGAL SUPPORT-LA

ATTN: ALICE X 2713  
066

CTRL: 4820568      ORDER DATE: 1/05/11      SERVICE TYPE: SPCFLBK  
CUST: 2009 BURKE WILLIAMS & SORENSEN (L)      REF: 06147-0015

PU: BURKE WILLIAMS & SORENSEN (L)	DL: LASC-LOS ANGELES
444 SOUTH FLOWER STREET	111 NORTH HILL STREET
LOS ANGELES      CA 90071	LOS ANGELES      CA 90012
RM:STE. 2400	RM:DEPTS 1-86    TO SEE: 8:30AM-4:30P
BC422252	
TAYLOR V. BURBANK	
OPPOSITION	

DEL DATE: 1/05/11      TIME: 16:04      SIGN: FILED/CC DELIVERED



GREGORY W. SMITH (SBN 134385)  
BORIS KORON (SBN 271327)  
**LAW OFFICES OF GREGORY W. SMITH**  
9100 Wilshire Boulevard, Suite 345E  
Beverly Hills, California 90212  
Telephone: (310) 777-7894  
(213) 385-3400  
Telecopier: (310) 777-7895

CHRISTOPHER BRIZZOLARA (SBN 130304)  
1528 16th Street  
Santa Monica, California 90404  
Telephone: (310) 394-6447  
Telecopier: (310) 656-7701

Attorneys for Plaintiff  
WILLIAM TAYLOR

**UNLIMITED JURISDICTION**  
**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK and DOES 1 through  
100, inclusive,

Defendants.

CASE NO. BC 422 252

[Assigned to John Shepard Wiley, Jr.,  
Judge, Dept. "50"]

PLAINTIFF'S REPLY TO DEFENDANT  
CITY OF BURBANK'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
DISCOVERY OF PEACE OFFICER  
PERSONNEL AND OTHER RECORDS  
REGARDING THE INVESTIGATION OF  
THE BURABNK POLICE  
DEPARTMENT CONDUCTED BY  
MERRICK BOBB

Date: January 19, 2011  
Time: 8:30 a.m.  
Dept.: "50"

Action Filed: September 22, 2009

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD, AND TO  
THE CITY OF BURBANK, AND THE CITY OF BURBANK POLICE DEPARTMENT:

-1-

PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR DISCOVERY  
OF PEACE OFFICER PERSONNEL & OTHER RECORDS RE MERRICK BOBB INVESTIGATION

**PLEASE TAKE NOTICE** that Plaintiff William Taylor (hereafter "Plaintiff") hereby presents the following reply in support of Plaintiff's motion for an order that Defendant City of Burbank ("defendant") and the Burbank Police Department ("BPD") produce certain records regarding an investigation conducted by Merrick Bobb regarding the Burbank Police Department, more specifically the evaluation of the Burbank Police Department following the allegations in Porto's and the termination of plaintiff, pursuant to *Evidence Code* §§ 1043 and 1045.

1.

## INTRODUCTION

Plaintiff submitted a *Pitchess* motion requesting specific documents relating to an investigation conducted by Merrick Bobb ("Mr. Bobb") regarding the Burbank Police Department. Defendant objected to such request, asserting an attorney-client privilege to such documents.

## 11.

THE COURT SHOULD GRANT A CONTINUANCE IN HEARING THIS MOTION TO  
ALLOW AMPLE TIME FOR PLAINTIFF TO DEPOSE MERRICK BOBB AND DEBRA  
WONG YANG.

In light of Defendant's statement and the declaration of Debra Wong Yang ("Ms. Yang"), Plaintiff respectfully requests that the court allow Plaintiff to take the depositions of Merrick Bobb and Debra Wong Yang. The requested depositions will assist in determining whether in-fact Merrick Bobb and/or Ms. Yang performed the duties of an attorney in the underlying investigation for which documents are being sought to be produced to Plaintiff.

More specifically, documents prepared by an attorney, including opinions and impressions, do not become privileged communications or work product if the attorney was hired to conduct an independent investigation. *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110. In addition, communications with an attorney are not protected by the attorney-client privilege unless the dominant purpose of the particular communication was to secure or render legal service or advice. *Montebello*

1 *Rose Co. v. Agricultural Labor Relations Bd.* (1981) 119 Cal.App.3d 1, 32.

2 Therefore, Plaintiff requests a 30-day continuance of this motion so that the  
3 depositions of Mr. Bobb and Ms. Yang may be taken to determine the scope of their  
4 duties in the subject investigation.

5 III.

6 **Conclusion**

7 For the reasons mentioned above, Plaintiff respectfully requests that the court continue  
8 the hearing date scheduled for this *Pitchess* motion for a minimum of 30 days, so Plaintiff  
9 can have an opportunity to conduct the required depositions.

10

11

12

13 Dated: January 11, 2011

LAW OFFICES OF GREGORY W. SMITH

14

By: 

15

BORIS KORON  
Attorneys for Plaintiff  
WILLIAM TAYLOR

16

17

18

19

20

21

22

23

24

25

26

27

28



PROOF OF SERVICE

STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 9100 Wilshire Boulevard, Suite 345E, Beverly Hills, California 90212.

On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Beverly Hills, addressed as follows:

DATE OF SERVICE : January 11, 2011

DOCUMENT SERVED : PLAINTIFF'S REPLY TO DEFENDANT CITY OF  
BURBANK'S OPPOSITION TO PLAINTIFF'S MOTION  
FOR DISCOVERY OF PEACE OFFICER PERSONNEL  
AND OTHER RECORDS REGARDING THE  
INVESTIGATION OF THE BURABNK POLICE  
DEPARTMENT CONDUCTED BY MERRICK BOBB

PARTIES SERVED : SEE ATTACHED SERVICE LIST.

XXX (BY FEDERAL EXPRESS) I caused the aforesaid document(s) to be delivered to Federal Express either by an authorized courier of Federal Express or by delivery to an authorized Federal Express office in a pre-paid envelope for overnight delivery to the addressee(s) as shown on the Service List.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to **Christopher Brizzolara, Esq.** at the following e-mail address: samorai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Beverly Hills, California on January 11, 2011.

\_\_\_\_\_  
Selma I. Francia

**SERVICE LIST**

**WILLIAM TAYLOR v. CITY OF BURBANK  
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252**

Christopher Brizzolara, Esq.  
1528 16<sup>th</sup> Street  
Santa Monica, California 90404  
(By Electronic Mail Only)

Kristin A. Pelletier, Esq.  
Burke Williams & Sorenson LLP  
444 South Flower Street, Suite 2400  
Los Angeles, California 90071-2953

Dennis A. Barlow, City Attorney  
Carol A. Humiston, Sr. Asst. City Atty.  
Office of the City Attorney  
City of Burbank  
275 East Olive Avenue  
Post Office Box 6459  
Burbank, California 91510

Attention: Chief's Office  
Burbank Police Department  
200 N. Third Street  
Burbank, California 91502

1 I am a citizen of the United States and employed in Los Angeles County, California. I am  
2 over the age of eighteen years and not a party to the within-entitled action. My business address  
3 is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953. On June 25, 2012,  
4 I served a copy of the within document(s):

5 **DECLARATION OF ROBERT J. TYSON IN SUPPORT OF DEFENDANT CITY**  
6 **OF BURBANK'S OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY'S**  
7 **FEES**

- 8 ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set  
9 forth below on this date before 5:00 p.m.
- 10 ☒ by placing the document(s) listed above in a sealed envelope with postage thereon  
11 fully prepaid, in the United States mail at Los Angeles, California addressed as set  
12 forth below.
- 13 ☒ by placing the document(s) listed above in a sealed OVERNITE EXPRESS  
14 envelope and affixing a pre-paid air bill, and causing the envelope to be delivered  
15 to an OVERNITE EXPRESS agent for delivery.
- 16 ☐ by personally delivering the document(s) listed above to the person(s) at the  
17 address(es) set forth below.

18 **SEE ATTACHED SERVICE LIST**

19 I am readily familiar with the firm's practice of collection and processing correspondence  
20 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
21 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
22 motion of the party served, service is presumed invalid if postal cancellation date or postage  
23 meter date is more than one day after date of deposit for mailing in affidavit.

24 I declare under penalty of perjury under the laws of the State of California that the above  
25 is true and correct.

26 Executed on June 25, 2012, at Los Angeles, California.

27  
28  
\_\_\_\_\_  
Lisa J. Villarroel

**SERVICE LIST**

*Taylor v. Burbank*  
LASC, Case No. BC422252

**BY OVERNIGHT**

Gregory W. Smith, Esq.  
Law Offices of Gregory W. Smith  
9100 Wilshire Blvd., Suite 345E  
Beverly Hills, CA 90212  
Telephone: (310) 777-7894  
Facsimile: (310) 777-7895

**BY OVERNIGHT**

Christopher Brizzolara, Esq.  
1528 16th Street  
Santa Monica, CA 90404  
Telephone: (310) 394-6447  
Facsimile: (310) 656-7701

**BY US MAIL**

Linda Miller Savitt, Esq.  
Phillip L. Reznik, Esq.  
Ballard Rosenberg Golper & Savitt, LLP  
500 North Brand Boulevard, 20<sup>th</sup> Floor  
Glendale, CA 91203-9946

**BY US MAIL**

Amy Albano, City Attorney  
Carol A. Humiston, Sr. Asst. City Attorney  
275 East Olive Avenue  
Post Office Box 6459  
Burbank, CA 91510  
Telephone: (818) 238-5707  
Facsimile: (818) 238-5724